

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 148/87

BETWEEN FRANCIS DIAN PATRICE JACKSON APPLICANT

A M D LAWRENCE OLIVER JACKSON DEFENDANT

Mr. M.E. Forte for the Applicant.

Miss D. Majorie Rose for the Defendant.

Heard: 2nd March, 1989, 16th and 17th January, 1990

Pitter, J.

This motion is brought by the Applicant pursuant to Section 16 of the Married Women's Property Act in which she seeks a declaration to determine her beneficial interest in a certain parcel of land situate at 26 Birchway, Kingston 6, and registered at Volume 1138 Folio 627 of the Register Book of Titles.

The parties were married on the 17th August, 1984 at which time the Applicant was employed to Price Waterhouse and Company and the Defendant to the Jamaica Telephone Company Limited. The marriage subsequently broke down and the Defendant left the matrimonial home in May 1981. A decree nisi was granted to the Applicant on the 1st June, 1986. There are three children of the marriage.

It is the evidence of both parties that subsequent to their marriage and while the Applicant was pregnant with their first child, they both discussed the purchase of a dwelling house, the property in question. With a loan of \$2,740.00 from the Jamaica Telephone Company Employers Credit Union Limited the Applicant paid to the vendors the National Housing Corporation, this said sum for deposit on the Agreement for sale of the relevant property. This loan has been fully repaid by the Applicant. The Defendant paid the closing costs of \$473.89. The title to the property was registered in both their names as "Tenants in Common."

A mortgage was subsequently obtained by them from the Jamaica Credit Union League for the balance of the purchase money. Both parties at the time of purchase agreed between themselves the manner in which the mortgage repayment would be made i.e. that each would pay half of the mortgage payment, one half of the grocery bill for their family and one half of the utility bills of light and water; the arrangement being that this would be done by each party in alternate weeks. They took possession of the property in April 1977 and made monthly payments to the National Housing Corporation of \$118.00 until the mortgage was obtained in 1978 when the monthly payments were adjusted to \$108.00. The arrangement worked well for about a year when the Defendant ceased making any further contribution except for the grocery bills on alternate weeks. From July 1979 the Applicant met all the mortgage instalments, utility bills and maintenance of the children. The Defendant subsequently left the matrimonial home in May 1981 and since then has made a payment of only \$40.00 in 1982. The relationship between them deteriorated and they were bitter towards each other. The Applicant subsequently paid off the mortgage in full.

It is common ground that the Applicant throughout the period the marriage subsisted and thereafter earned substantially more than did the Defendant.

I find as a fact that the Applicant's contribution towards the purchase of No. 26 Birchway was significantly greater than that of the Defendant, being somewhere in the region of 85%.

The Defendant was cross-examined by Mrs. Forte for the Applicant and his credibility was severely shaken in the areas crucial to the determination of the facts. In the circumstances therefore the evidence of the Applicant is to be preferred.

I find as a fact that the Defendant who had been constantly borrowing money from the Applicant, in 1982 told her that he needed some money, and persuaded her to make a loan to him with the promise that if she did this he would sign over his portion of the house to her for the benefit of the children of the marriage. An agreement was reached between them as to the value of the house at the time and their respective interests. This was reduced to writing which was duly signed and witnessed and now tendered in evidence of Exhibit "B".

It is the evidence of the Applicant and which I accept that she paid over to the Defendant on the day the agreement was signed the sum of \$710.00 as required.

The Applicant contends that in reliance upon this agreement Exhibit "B" and in the belief that the Defendant had relinquished to her all his interest in the property, in December 1982 she did extensive additions to the house including an extra bedroom, bathroom and washroom thus enhancing its value significantly. She attests that she would not have done so if the Defendant had not relinquished to her his entire share in the property. Further extensions were subsequently done to the said house.

In 1983 an Order was made in the Family Court for the Defendant to pay \$220.00 for the maintenance of the children.

Mrs. Rose for the Defendant submits that on the evidence there is a presumption of ownership in equal shares, the property having been registered in the names of both parties as "Tenants in Common". Further that the Court ought not to take into consideration their respective contributions in determining the extent of their interest in the property save and except the excess amounts paid by the Applicant over and above her 50% obligation should be made good by the Defendant.

To justify her arguments she points out that the very manner in which the mortgage payments and other bills were to be paid, leads to the inescapable inference that they intended to share equally and relies on the maxim "Equality is equity" which should be applied in the instant case. Finally she submits that Exhibit "B" should be declared null and void on the basis that there was no consideration i.e. that the sum of \$710.00 was not paid. I find as a fact that this sum was paid to the Defendant. Further she contends that the condition precedent in Exhibit "B" has not been met.

Mrs. Forte submits that the intention of the parties at the time of purchase is to be found in the Title - Exhibit "4" where the property was conveyed to them both as Tenants in Common followed by the agreement on how the mortgage payments were to be effected. The only question for the Court is how to evaluate the respective shares. This she says is recited in the agreement dated 4th January, 1982 which they both signed.

On the facts before me, prima facie the Defendant would be entitled to 50% in the property with the necessary adjustments being made in favour of the Applicant. It was held in Cobb v. Cobb (1955) 2 AER.

"In accordance with the original intention of the parties at the time of the purchase of the house, they were entitled beneficially to the proceeds of sale in equal shares Rimmer v. Rimmer (1952) 2 AER 863 applied and as from the date when the marriage broke down ... both parties were liable as between themselves in equal shares for the sums payable under the mortgage."

Komer L.J. continued ...

"If therefore parties wish to ensure that beneficial interests shall belong between them in particular proportions, it may be expedient that a deed contemporary to the transaction of purchase should declare what the proportions are."

At page 698 - Lord Denning M.R. had this to say:-

"... when both husband and wife contribute 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 and all the more so when property is taken as here in their joint names and was intended to be held 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."

Where the intention of the parties as to whom the property is to belong, or in what definite shares each should hold is ascertainable, effect will be given to that intention. See Rimmer v. Rimmer (1952) 2 AER 863 (supra).

Mrs. Forte places great reliance on the document Ex.B in support of her claim. What effect if any does Exhibit B have on the competing claims of the parties? The Court will have to consider whether this document was intended to create any legal relations between the parties.

In Merrit v. Merrit (1970) 2 AER at page 761 - Lord Denning M.R. in considering the effect of a written agreement made by the husband to the wife in respect of the ownership of the matrimonial house observed:-

"... The parties are living in amity. In such cases their domestic arrangements are ordinarily not intended to create legal relations. It is altogether different when the parties are not living in amity but are separated, or about to separate. They then bargain keenly. They do not rely on honourable understandings. They want everything cut and dried. It may safely be presumed that they intend to create legal ... the paper which the husband signed dealt with the beneficial ownership of the house. It was intended to belong entirely to the wife."

I adopt the above passage as being that of my own and apply it to the instant case, from the surrounding circumstances, I find that the effect of the agreement Exhibit "B" was that the parties intended to create legal relations, and it being sufficiently certain and there being good consideration by the Applicant paying money to the Defendant, he is estopped from claiming a share in the property. The Applicant is therefore entitled to a declaration that she is the sole owner of all that parcel of land situate at 26 Birchway, Kingston 6 in the parish of Saint Andrew and registered at Volume 1138 Folio 627 of the Register Book of Titles and to an order that the Defendant join in transferring it to her.

Costs to the Applicant to be agreed or taxed. Liberty to apply.