

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E.198 OF 1992

CHAMBERS

IN THE MATTER OF SECTION 16 OF THE  
MARRIED WOMEN'S PROPERTY ACT.

AND

IN THE MATTER OF PROPERTY LOCATED AT  
2 MUIR PARK AVENUE, MAY PEN IN THE PARISH  
OF CLARENCON.

AND

IN THE MATTER OF PROPERTY LOCATED AT  
TRENTON ROAD, MAY PEN IN THE PARISH OF  
CLARENDON.

AND

IN THE MATTER OF PROPERTY LOCATED AT  
15 SMITH AVENUE, OLIVER GARDENS, MAY PEN  
IN THE PARISH OF CLARENDON.

BETWEEN	JOYCE KING	PLAINTIFF
A N D	CRANMER KING	RESPONDENT

Gordon Steer & Mrs. Janet Taylor instructed by Taylor, Deacon and James for Applicant.

Enos Grant instructed by Gilroy English for Respondent.

Heard: March 2, June 10 & 11, 1993  
July 15 & September 23, 1994.

LANGRIN, J.

By an Originating Summons dated June 30, 1992 the applicant seeks a determination of all questions between the parties in respect of the ownership of the said properties and in particular for the following orders:

1. A declaration of the rights and interests of the parties and the right of first option of the applicant in property located at 5 Trenton Road, May Pen in the parish of Clarendon registered at Volume 1040 Folio 61 of the Register Book of Titles.

2. A declaration as to the rights and interests of the parties in the property located at 2 Muir Park Avenue, May Pen in the parish of Clarendon.
3. A declaration that the Respondent no longer owns neither a legal nor beneficial interest in the property located at 15 Smith Avenue, Oliver Gardens, May Pen in the parish of Clarendon registered in Duplicate Certificate of Title at Volume 1154 Folio 818 of the Register Book of Titles.

In this matter the parties presented the usual affidavit evidence. They both subjected themselves to vigorous cross-examination which only served to harden the lines which were drawn between the parties. What has been established is that the parties were married on the 5th day of February 1956 and since that time, the petitioner then a District Nurse and the respondent, then a Detective Constable, acquired several properties. The relevant titles had the names of both parties registered on them. In particular the property situated at 15 Smith Avenue, May Pen is registered in the names of both parties with Sharon Simmonds, a neice of the applicant registered as a joint tenant along with the parties.

Mr. Enos Grant on behalf of the respondent during the hearing alluded to other properties allegedly owned by the applicant but no evidence was adduced as to ownership by the applicant. It was conceded by the respondent that the applicant had started in business before he had. She had been running a Nursing Home since 1972. The respondent deponed that he did comprehensive refurbishing on all 9 properties owned by them. During the marriage they bought and sold 14 properties. Eleven of the titles were registered in both their names. The evidence indicates that the other 3 properties were disposed of prior to this application.

The evidence is clear and I find as a fact that the parties bought and sold properties in their names during the period of the marriage. By November, 1990 the marriage had broken down.

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 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, 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 interest 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. 13/84; 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 applying these principles of law to the facts relating to the first two premises I hold that both spouses made substantial contributions to the acquisition of these properties and therefore the maxim 'Equality is Equity' should apply.

The question which I must now decide is whether the respondent has a one-third share in premises situated at 15 Smith Avenue, May Pen, and if so has it been divested?

Premises - situated at 15 Smith Avenue  
May Pen, Clarendon.

The plaintiff contends that the title to this property was transferred on 9th March, 1989 to Cranmer King, Joyce King and Sharon Simmonds as joint tenants for a consideration of \$80,000.00. The deposit was provided by herself and Sharon Simmonds. She placed her husband's name on the title by way of convenience since he made no contribution towards the acquisition of the property. The money which was spent on Smith Avenue for refurbishing came from the proceeds of sale of Manchester Avenue of which the respondent received his portion of the proceeds of sale.

On the other hand there is no credible evidence by the respondent that he contributed directly to the acquisition of this property. Accordingly I hold that he made no direct contribution to the acquisition of this property.

The law provides that where one spouse's money is used to purchase property which is conveyed into joint names the owner of the legal estate is presumed to hold the property on a resulting trust for the person who provided the funds. Where a husband purchases property and puts it into his wife's name, or into joint names, he is presumed to intend a gift to her by the application of the presumption of advancement. These presumptions have always been rebuttable by evidence of intention.

On the 14th November, 1990 the respondent submitted to the applicant a statement of account in respect of labour, cost and materials used in the construction of the premises at 15 Smith Avenue in addition to loans and interest payable to the Building Society.

The respondent categorically stated that this was all that was due to him and his 'sweat and labour can go'. A payment of \$85,000 was made to the respondent. That being so a binding contract was concluded and the respondent no longer has any interest in the said premises.

I hold that there was a resulting trust in favour of the applicant in respect of the one-third share of the respondent. Alternatively, the payment of Eighty five thousand dollars to the respondent was in full satisfaction of the share held by the respondent.

For the reasons given I make the following declaration:

1. That the beneficial interest in respect of property located at 2 Muir Park Avenue, May Pen, Clarendon be apportioned between applicant and respondent in equal shares.
2. That the beneficial interest in respect of property situated at 5 trenton Road, May Pen, Clarendon be apportioned between applicant and respondent in equal shares.
3. That in respect of the one-third share of the respondent in property situated at 15 Smith Avenue, May Pen, Clarendon there be a resulting trust in favour of the applicant. Alternatively the payment of \$85,000.00 by the applicant was in full satisfaction of the respondent's one-third share of the property.