



[2020] JMSC Civ. 64

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018 HCV 01438

BETWEEN	OMAR MITCHELL	CLAIMANT
AND	VESTA FAY DAVIDSON MITCHELL	DEFENDANT

IN CHAMBERS

Miss Carleen McFarlane instructed by McNeil & McFarlane for the Claimant.

Miss Shari Smith instructed by Chen Green & Co for the Defendant.

Heard: 24th September, 2019 and 29th April, 2020

Division of matrimonial property - The Property (Rights of Spouses) Act sections 6,7,11, 13,14 and 23 - Joint tenancy- Equity.

Wiltshire, J

Introduction

[1] Mr. Mitchell is asking the court to declare that he is entitled to a 50% interest in premises registered at Volume 991 Folio 485 of the Register Book of Titles or in the alternative to determine the respective interest of the parties in the said premises.

Background

[2] The Claimant is married to the Defendant. Mrs. Mitchell and her daughters are the registered owners of said premises being property situated at Lot # 193, 7 Catterton Road, Buckfield in the parish of St. Ann and registered at Volume 991 Folio 485 of the Register Book of Titles. The property was purchased by Mrs. Mitchell some four to five years before the parties met. They met sometime between 2006 and 2007 and became friends, eventually getting married in 2009. The parties separated in October 2017 and the Claimant commenced proceedings for dissolution of the marriage in 2018.

Claimant's Case

[3] Mr. Mitchell stated that when they met he was seeking to collect pay due to him for work he had done on her house on the instruction of her former partner. He said she also told him that she wanted to sell the house. He was working at a guesthouse in Negril and in January 2007 they came to a verbal agreement that they would partner together to repair, renovate and extend her house so that it could be used as a guesthouse similar to the one in Negril.

[4] Mr. Mitchell further stated that at that time he owned a two (2) bedroom house in Negril and he continued to live and work in Negril until November 2007 after which he moved to the premises in St. Ann. Between January and November 2007 he said he travelled between Negril and St. Ann to check on the house. He said funds were low and Mrs. Mitchell decided to add his name to the title so that they could refinance the mortgage and get money to properly renovate the house. They eventually decided against that, and agreed that he would do some of the work. He agreed to use some tiles that he already had, get the tiler Adrian and paint the premises. He advised Mrs. Mitchell to buy the thin set and grout and pay the tiler.

[5] Mr. Mitchell also said that he purchased blocks, sand, steel, stone and other material for the renovation from his resources and Mrs. Mitchell sent money to pay the workmen and pay for rental of cars. He stated that he got one workman as he could not dedicate himself to the repairs fully because he had other things doing

but further said that he was assisted by his cousin and other friends as he did a lot of the repairs himself. He said that he worked for free as he considered it a joint venture and he was also managing the rental to guests. Mr. Mitchell further stated that he used the income from the sale of his house in Negril and injected same into the repairs of the house in St. Ann.

- [6] He said that Mrs. Mitchell was operating between the United Kingdom and Jamaica and then eventually came home and tried to find work here as a Social worker but was unsuccessful. He was the only one working hence the expansion and renovation was delayed and the money situation caused tension between them. Eventually Mrs. Mitchell returned to the United Kingdom in 2015 and he said that he continued the work on the house without her sending any funds. The relationship began to deteriorate and he said that Mrs. Mitchell proposed selling the house and dividing the proceeds in four to include her two daughters. He objected and told her to pay him back what he had spent and also she was to pay Rambo, the workman. This was not agreed.
- [7] Mr. Mitchell added that whilst he was overseas in April, 2017, Mrs. Mitchell came to Jamaica and used all the tiles he had purchased and kitchen fixtures and completed the back section of the house. The relationship continued to deteriorate but he said that he continued to supervise the renovations and assist with the plumbing and painting work. The parties eventually separated and that has led to Mr. Mitchell asking the court to declare that he has an interest in the property.

Defendant's Case

- [8] Mrs. Mitchell has denied that she asked Mr. Mitchell to partner with her to renovate, repair or extend the property in question. She said that in the beginning Mr. Mitchell was offered a job as a groundsman to take care of the premises in her absence and she offered to compensate him. This was refused and he requested that he be allowed to live on the premises as payment for his services. She stated that before she became involved with Mr. Mitchell, she and her daughters had decided

to sell the house and return to the United Kingdom. Mr. Mitchell, who she said was not gainfully employed, encouraged her to keep the property because he wished to continue living in the home as he was an ex-convict and unable to find legitimate work and therefore unable to pay for housing.

- [9]** She said that throughout the marriage she provided all the construction material and the funding for the workmen whilst financially supporting Mr. Mitchell who was not gainfully employed. She further said that the property was always for the use and enjoyment of herself and her daughters. It had been previously re-financed but her previous partner had stolen the funds hence she would not have suggested that Mr. Mitchell be added as an owner of the property. She stated that Mr. Mitchell's job was to oversee the renovations and delegate the work to be done to the property to the employed tradesmen.
- [10]** Mrs. Mitchell stated that because Mr. Mitchell was unemployed he was in no position to purchase paint and blocks and did not use his funds to purchase anything for the property. She said that he left his position as groundsman in Negril to carry out the same type of work on her property. She sent funds to Mr. Mitchell monthly and upon his request to cover the cost of material and his personal maintenance. Further the renovation of the house was not a joint venture as Mr. Mitchell's contribution was not substantial and he was the party benefitting. She said that he carried out minor renovations himself.
- [11]** She further stated that she unofficially retired and returned to Jamaica and asked her husband to get a job since she would no longer be working. She said that he told her that he could not find a job because of his police record and suggested that she return to the United Kingdom to work. Mrs. Mitchell claimed that she did not receive any of the proceeds from the rental fees collected for the rental of the property as Mr. Mitchell would take the fees for himself. When the marriage began to break down Mr. Mitchell wanted her to sell the property so that he could recover from the proceeds of the sale.

[12] Mrs Mitchell indicated that she did use Mr. Mitchell's tiles to complete renovations in 2017 but maintained that the kitchen fixtures were purchased by her and sent to Jamaica. She also insisted that she sent funds to purchase all the furniture, fixtures and appliances for the property. While Mr. Mitchell was overseas in 2017, she agreed that she travelled to Jamaica to do the renovations herself as she had stopped sending money to Mr. Mitchell who by then was working in Manchester. She said that he thereafter abandoned the property and was rarely present as he did have a job at that time. She took over the renovation process and he would from time to time try to assist the workmen but it was not requested of him. She stated that Mr. Mitchell did assist the professional tradesmen in carrying out the renovations on the property but she supported him financially for the eight years of their marriage and he was never in a position to contribute financially to the property. She indicated that she spent a total of Eighty Thousand pounds to renovate the property.

Issues

[13] To resolve this matter, the court must determine the following:

- (1) Whether the property in dispute is the family home or other matrimonial property.
- (2) Whether the equitable relief of proprietary estoppel is available to the Claimant.
- (3) Whether the Claimant, in the face of the property being held as a joint tenancy, is entitled to any interest.
- (4) Whether the court is empowered under PROSA to make orders directing the Defendant to pay the Claimant a sum of money for his contribution (if any) to the improvement of the property.

Analysis

- [14] The Claimant did not, in his Fixed date claim form, set out the grounds on which he brought his claim. Rule 8.8 (b) and (c) of the Civil Procedure Rules 2002 provide that a claim by way of a fixed date claim form must state the grounds, whether a statutory provision or a rule, on which the orders are being sought. Hence the court was not given any indication as to whether Mr. Mitchell was seeking an interest in the premises as the family home or as other matrimonial property. The court also noted that Mr. Mitchell, in his affidavits of the 3rd October, 2018 and 11th September, 2019, gave evidence which raised the equitable principle of proprietary estoppel. It was in submissions made by Counsel representing Mr. Mitchell that the court was made aware that the claim was grounded in sections 6,7,11, and 13 of the PROSA and/or in the principles of equity and trust.
- [15] Counsel for Mr. Mitchell submitted that he contributed both financially and otherwise to the improvement of the property and further that there was an agreement between the parties for Mr. Mitchell to assist in renovating and expanding the house so as to use it for their mutual benefit. It was also submitted that from the evidence it could be said that there was a common intention between the parties as they had agreed to become partners in renovating and repairing the house to use it as a guest house to earn income for both of them.
- [16] Counsel submitted that Mrs. Mitchell encouraged and induced Mr. Mitchell to improve the property, knowing that he was doing so in the belief that he would acquire an interest in the property. Further that Mr. Mitchell had suffered a detriment by expending his time, money, skills and other resources to improve the property and it would be unconscionable for Mrs. Mitchell to benefit wholly from said contribution. Counsel cited the cases of **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ 6, and **Thorner v Major and Ors** [2009] 3 All ER 945 in support of her submissions.
- [17] Counsel for Mrs. Mitchell responded that Mr. Mitchell had failed to satisfy any of the considerations under section 14(2) of the PROSA and had not established that there was an agreement between the parties for the property to be used for the

benefit of both parties. It was contended that Mr. Mitchell benefitted from living freely at the premises for years. It was also submitted that if the court held the view that an award must be made to Mr. Mitchell, then the court ought to consider that the property was owned by two other parties and Mrs. Mitchell.

- [18]** Resolving this matter rests totally on my assessment of the credibility of the parties and my acceptance of the version of events that, on a balance of probabilities, seems most likely to have occurred. Mr. Mitchell exhibited receipts which he said supported his claim that he contributed his own resources to the purchase of material for the renovation of the house. Mrs. Mitchell however stated that Mr. Mitchell was unemployed and unemployable and she was sending money to support him and to finance the renovations, both materials and labour. She exhibited statements from Jamaica National as evidence of sums sent to Mr. Mitchell. She insisted that his unemployed status would have prevented him purchasing any material. I must indicate that I found both parties to be less than forthright.
- [19]** The receipts relied on by Mr. Mitchell show payments for some material in 2008, 2009 and 2011, sums received for the rental of the property and the majority for labour and workmanship. He indicated under cross examination that when he paid the workmen, he also wrote the receipts for them and whenever Mrs. Mitchell came to Jamaica she would double check the figures with them. He also said that the labour prices were agreed beforehand between the men and Mrs. Mitchell.
- [20]** Mr. Mitchell insisted that he was employed and listed various jobs that he undertook to support himself and his daughter. Yet his evidence was that prior to the marriage and during that time he was doing a lot of work on the house, assisted by workmen. Further that by then he had left Negril to work on the house and manage the rental guests. When challenged under cross examination to explain how he was both employed and dealing with the house at the same time, he said that he worked for these short periods and then would be on a break for a while. He further explained that he received these jobs, for example painting, through the

efforts of other persons and was only paid in cash. He said that he would save his money so it would last him through those periods when he was not working.

- [21]** The court finds it very hard to believe that from inconsistent earnings, Mr. Mitchell was able to solely support himself, his child and contribute to both materials and labour for the renovation of the house. It is clear that Mr. Mitchell was a jack of all trades of some sort, but I do not accept that he was employed at the time the parties got married nor do I believe that he maintained employment consistently over the 8 years of the marriage and the renovations.
- [22]** Mr. Mitchell in one breath said that he bought the construction material and Mrs. Mitchell sent money to pay the workmen. Then he later said that they both contributed to the construction costs and the payment of the workmen. Mrs. Mitchell stated that although she only visited twice per year, whenever she was in Jamaica, she would go to the hardware and use her visa card to buy the material for construction. On other occasions, she said Mr. Mitchell would call and tell her something was needed and she would send the money.
- [23]** Mr. Mitchell did not deny that he received money from Mrs. Mitchell, he however insisted that it was only to pay the workmen but then he also complained that it was not consistent. It is noted that he testified that in 2015 Mrs. Mitchell returned to the United Kingdom and thereafter for 11 months he continued the work on the house without her sending any funds. Whilst there is no evidence of the specific month she returned, the statement from Jamaica National contradicted his evidence as it indicated that Mr. Mitchell did receive funds between January 2015 and December 2015 and thereafter between February 2016 and December 2016.
- [24]** Mrs. Mitchell maintained that Mr. Mitchell was an ex-convict and that he told her that because of his record, he was unemployable. On the evidence however, when she met him he was then employed by her former partner. She also admitted that he did leave his job as a groundsman in Negril to come to St. Ann. Under cross examination she was asked if he gave up his job to come and be her groundsman

and she answered in the negative and said, "We were in a relationship at that time." Mrs. Mitchell however had also said that she offered to pay him as a groundsman for her premises but he declined and said that he would offer his services to repair and renovate in exchange for living at the house because he could not find affordable housing. Clearly Mr. Mitchell was employable and Mrs. Mitchell's evidence about his reasons for moving to St. Ann are not clear to this court. One suggested it was for their relationship, and the other suggested it was a job offer.

[25] Mrs. Mitchell evidence was laced with references to Mr. Mitchell's criminal record and she constantly referred to him as an ex-convict. She relied on that to support her position that he could not work and/or find anywhere to live and was dependent on her financially. She maintained that he wanted her to work and continue sending money to look after him, yet she denied sending him funds monthly as she could not afford it, and stated that if he asked, she would send it.

Was this the family home or matrimonial property?

[26] According to section 2 (1) of the Property (Rights of Spouses) Act (PROSA) family home means:

"the dwelling house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling house and used wholly or mainly for the purposes of the household, but shall not include such dwelling house which is a gift to one spouse by a donor who intended that spouse alone to benefit."

[27] It has been agreed by Counsel for both parties that the property in question was not wholly owned by the Defendant, as her daughters hold the property along with her as joint tenants. This court is also of the view that the parties did not use the house habitually or from time to time as the only principal family residence. The evidence from both parties is that the house was being renovated for the purpose of being a guest house. The property therefore fails both the ownership and residence test under the statute, and is not the family home.

[28] Counsel for Mr. Mitchell therefore went on to submit that the court was empowered under section 14 of the PROSA to make orders as to the division of property other than the family home. The PROSA treats with other matrimonial property under section 13, where the court is empowered under section 14 (1) to make orders as to division of property other than the family home. It states:

“where under section 13 a spouse applies to the court for a division of property the court may:

- (a) Make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or*
- (b) Subject to section 17 (2) divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2) or where the circumstances so warrant, take action under both paragraphs (a) and (b)”*

Section 14 (2) states:

“The factors referred to in subsection (1) are-

- (a) The contribution, financial or otherwise directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has since the making of the financial contribution ceased to be property of the spouses or either of them;*
- (b) That there is no family house*
- (c) The duration of the marriage or the period of cohabitation*
- (d) That there is an agreement with respect to the ownership and division of property*
- (e) Such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into Account.*

[29] In subsection (2) (a) “contribution” means –

- (a) The acquisition or creation of property including the payment of money for that purpose;*
- (b) The care of any relevant child or any aged or infirm relative or dependent of a spouse;*
- (c) The giving up of a higher standard of living than would otherwise have been available;*

(d) *The giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which –*

enables the other spouse to acquire qualifications; or

aids the other spouse in the carrying on of that spouses' occupation or business

(e) *The management of the household and the performance of household duties;*

(f) *The payment of money to maintain or increase the value of the property or any part therefore,*

(g) *The performance of work or services in respect of property or part thereof;*

(h) *The provision of money, including the earning of income for the purposes of the marriage or cohabitation*

(i) *The effect of any proposed order upon the earning capacity of either spouse;*

(4) *For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.*

[30] I have already determined that the property in question was not the family home. It does fall for consideration however as matrimonial property. The marriage lasted for eight years, which, whilst not short, was one where for the most part one party lived in Jamaica and the other lived in the United Kingdom. It was not disputed that Mrs. Mitchell travelled to Jamaica twice per year. Mr. Mitchell said that he and Mrs. Mitchell entered in a verbal agreement to renovate and expand the house to use it as a guest house for both their benefit, their mutual benefit. He also said that she had represented to him that her daughters had no interest in the property and had no right or claim to same since they made no contribution to it. Hence based on that representation and their agreement he embarked on assisting and contributing to the improvement of the property from his own resources. He further stated that it was always their intention for him to have an interest in the property which was why they had enquired about adding his name to the title.

- [31]** Mrs. Mitchell denied these assertions. She said that the both of them talked about the guest house idea and he had offered to help her when she wanted to sell. He was there to oversee the work and live in her house for free. In response to a suggestion from counsel she stated, "We were a partner. We were partners before we got married." Whether Mr. Mitchell moved into the house because they were in a relationship or because she offered him a job, the critical question is whether there was an agreement with respect to the ownership and division of property.
- [32]** I am of the view that an agreement that the parties renovate and expand the house so as to use it as a guest house for their mutual benefit is not an agreement with respect to the ownership and division of the property. Her statement that they were partners before they got married, only suggests a partnership that relates to the renovation of the house and the operation of a guest house, nothing more. Regarding the putting of Mr. Mitchell's name on the title, the reason given by Mr. Mitchell why they went to the bank in the first place does not indicated an intention for him to have an interest in the property. The visit to the bank centred around the possibility of refinancing the mortgage to raise funds to finance the renovations. He said that the Bank manager was asked about the adding of his name but they did not pursue it because of the costs. There is however no evidence of any further discussion or attempt to follow through on this intention which has been alleged. I do not believe there was any such intention or any agreement.
- [33]** Mr. Mitchell testified that he invested both his money and his labour into the renovations. He said that he went as far as selling his house and injecting the proceeds into the renovation. It is not disputed that Mr. Mitchell had tiles which were used in the renovation. The parties do not agree on when renovations commenced. Mr. Mitchell said it was in 2007, while Mrs. Mitchell said it was in 2008. The receipts submitted by Mr. Mitchell as proof of his financial contribution start in 2008 giving credence to Mrs. Mitchell's evidence about when repairs began. Additionally, Mr. Mitchell said he was going between St. Ann and Negril for most of 2007 and only moved to St Ann in November because coke heads were

vandalising the property. Renovations, based on these receipts, spanned the years 2008 to 2014 and both parties agreed that work also took place in 2017.

- [34]** I have already indicated that I do not accept Mr. Mitchell's evidence that he worked throughout the marriage and used his earnings to purchase material and pay for labour for the renovations. These repairs literally spanned the life of the marriage. I accept Mrs. Mitchell's evidence that she purchased material with her credit card when she visited Jamaica and sent money to Mr. Mitchell to pay the workmen. The majority of the receipts are for labour and are in Mr. Mitchell's name because he wrote them up when he paid the men.
- [35]** Mr. Mitchell said that he sold his house and injected the proceeds into the renovations. Under cross examination he gave further details of selling his chattel house in 2012 to his baby mother for \$180,000.00 and using said funds in the renovation of Mrs. Mitchell's house. He said he used the funds to buy sand, stone and steel. Mrs. Mitchell denied Mr. Mitchell's claim that he had used the proceeds of the sale of his house in the renovation of her house. She did admit though that he did have a house in Negril which she had visited and observed that it was rented. The court has noted that amongst the receipts submitted for material are two for loads of sand and stone. These receipts are dated 2008 and 2011, which predate the sale of Mr. Mitchell's house.
- [36]** Mrs. Mitchell also refuted the claim that Mr. Mitchell had used his own money and paid her mortgage. She insisted that she on occasions sent money to him to pay the mortgage. Mr. Mitchell could not state definitively what the mortgage sum was and gave no evidence of the actual sums he allegedly paid. Mrs. Mitchell said that Mr. Mitchell never used any carpentry skills in the renovations, but he did help the workmen with the mixing of cement. She also said that he looked after her house good.
- [37]** I do not accept that Mr. Mitchell used personal funds to pay the mortgage for the house or that he used the proceeds of the sale of his house in the renovations. I

accept the evidence that Mr. Mitchell and Mrs. Mitchell did partner to operate the property as a guest house. Mr. Mitchell lived there and had oversight of the renovations while he conducted the affairs of the guest house pursuant to the partnership with his wife. Mrs. Mitchell could not see to the daily operations as she was in the United Kingdom most of the time. In that regard he did make a contribution in the form of the performance of work in respect of the property. The tiles which belonged to Mr. Mitchell were also used in the renovation of the house. He did therefore contribute to the conservation and improvement of the property.

[38] There is however merit in the submission by counsel for Mrs. Mitchell that the court must consider that the property is not owned solely by her. The certificate of title shows that Mrs. Mitchell and her two daughters are the registered joint tenants. In a joint tenancy there is no separate and distinct share in the property to be held wholly by one joint tenant. Mrs. Mitchell and her daughters are the joint owners of the property but the daughters were not named as parties to the claim. Can the property be divided, as requested by Mr. Mitchell, without Mrs. Mitchell's daughters being parties to the claim?

[39] In **Hyacinth Gordon v Sidney Gordon** [2015] JMCA Civ 39 a similar situation arose where Brooks JA had to address the issue of whether the husband could be awarded an interest in property belonging to a third party without the court giving that third party an opportunity to be heard. Justice Brooks said at paragraph 20:

“It is a basic tenet of our common law that a person could not be deprived of his interest in property without having been given an opportunity to be heard in respect of any such deprivation. A court that is therefore made aware of a person’s interest in property should, therefore, make no order concerning that property, unless that person is given an opportunity to appear and make representation in that regard.”

Brooks JA therefore held that Mr. Gordon had no claim against the true owners and the work he had done on the property of the third parties could not bind them as they had neither “tacitly requested or approved the work”. In the instant case, Mr. Mitchell is found in the same dilemma. Despite his claim that Mrs. Mitchell had told him that her daughters made no contribution to the property and had no claim

to it, they needed to have been present to answer to those allegations. Mr. Mitchell's contribution therefore does not entitle him to any share in the property.

Proprietary Estoppel

[40] Counsel for Mr. Mitchell made submissions that the court should in the alternative consider his entitlement in equity and sought to rely on the principle of proprietary estoppel. Section 4 of the PROSA states:

“The provisions of this Act shall have effect in place of the rules and presumptions of the common law and of equity to the extent that they apply to transactions between spouses in respect of property and, in cases for which provisions are made by this Act, between spouses and each of them and third parties.”

Where an application is therefore now made under PROSA it is the provisions thereunder which must guide the court in determining issues of legal and beneficial interest between spouses. Edwards JA stated clearly in **Hugh Sam v Hugh Sam** [2018] JMCA Civ 15 at paragraph 131 that:

“There is therefore no question that since the implementation of PROSA, the ‘presumptions of common law and equity’ are no longer applicable to transactions between spouses in respect of property and between them and third parties, where provisions are made for it by the Act. Therefore, all claims as to an entitlement to a share of the matrimonial property under PROSA must satisfy the factors set out in section 14, for property other than the family home and section 6 and 7 where the division of the family home is in issue. This means that submissions regarding any reliance on common law presumptions and equitable principles and the authorities dealing with those presumptions and principles are not relevant to transactions between spouses in respect of property for which and in cases where provisions have been made in respect thereof, by PROSA. All submissions must be referenced by the relevant factors as set out in PROSA, unless there are no provisions in PROSA covering that issue.”

The issues therefore having been addressed under PROSA, there is no need for the court to consider and make any determination under equity.

[41] Having accepted that Mr. Mitchell did make a contribution to the conservation and improvement of the property in St. Ann, the question which now arises, is how is he to be compensated. The court has not been furnished with any evidence of the

value of the tiles contributed by Mr. Mitchell. Counsel on his behalf submitted that if the court could not grant Mr. Mitchell's request for an interest in the property, then it could exercise its powers under section 23 of PROSA and or its equitable powers to set a method of quantification of Mr. Mitchell's interest and or contribution to the improvement of the property. Counsel made reference to the uncontested evidence of the before and after expansion photographs of the house and submitted that an order could be made that Mrs. Mitchell pays Mr. Mitchell a lump sum for his contribution.

[42] Section 23 of PROSA states as follows:

“Without prejudice to any other provision of this Act, the Court may make any of the following orders –

- (a) *for the sale of property or part thereof and for the division, vesting or settlement of the proceeds thereof,*
- (b) *for the vesting of property owned by both spouses as tenants in common in such share as the Court considers just,*
- (c) *for the vesting of property or part thereof in either spouse,*
- (d) *for postponing the vesting of any share or part thereof in the property until such future date contingent on such future happening as may be specified in the order,*
- (e) *for the partition or vesting of any property,*
- (f) *for vesting property owned by one spouse in both spouses jointly or as tenants in common in such share as the Court considers just,*
- (g) *for vesting property owned by both spouses (whether jointly or as tenants in common) in one spouse,*
- (h) *for the cancellation of any settlement of a family home held in joint tenancy;*

- (i) *for the payment of a sum of money by one spouse to the other spouse;*
- (j) *for the transfer of land;*
- (k) *for the transfer of shares, stocks, mortgages, charges, debentures or other securities or of the title to any other property;*
- (l) *for the transfer of rights or obligations under any instrument or contract notwithstanding any term or condition contained in such instrument or contract;*
- (m) *for varying the terms of any trust or settlement, not being a trust under a will or other testamentary disposition;*
- (n) *for the vesting of property or part thereof in a relevant child;*

(2) Where the Court makes an order directing one spouse to pay to the other spouse a sum of money, the court may direct that payment be by a lump-sum payment or by instalments and either with or without security and otherwise in such manner and subject to such conditions as the Court thinks fit.

[43] In instances where the court has made a determination of the percentage interest in property, to which parties are entitled, then it usually makes an order for the said property to be valued so that the parties can realise their respective interests. Nowhere in section 23 is the Court empowered to set a method of quantification of the party's interest and/or contribution. In the instant case, as Mr. Mitchell cannot be granted any rights in the property, his compensation is limited to any actual expenditure which the court accepts that he made. Since he failed to furnish the court with the value of the tiles, there is no evidence of any expenditure which he could recover from Mrs. Mitchell.

[44] Disposition

- (a) The court therefore declares that the Claimant is not entitled to any interest in the premises registered at Volume 991 Folio 485 of the Register Book of Titles.

- (b) Costs awarded to the Defendant to be taxed if not agreed.