

Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY
SUIT NO. E160 OF 1998.

BETWEEN HAZEL NEYSMITH PLAINTIFF
AND KENNETH LLOYD NEYSMITH DEFENDANT

Miss Sandra Johnson instructed by Audrey Allen and Co for the Plaintiff,
Mrs. Meikle-Gooden instructed by Johnson, Meikle & Co for the Defendant.

SUMMONS FOR THE DIVISION OF PROPERTY

Heard - July 14, 23, 28 1998

JUDGMENT

HARRISON I

This is an application by the wife, under the Married Women's Property Act for a declaration as to her interest in the matrimonial property situate at 23 Constant Spring Grove and registered at Volume 1046 Folio 682 of the Register Book of Titles.

As usual in these cases, the parties have sworn to Affidavits setting out what each did in relation to the acquisition of the property but the Court did not have the benefit of seeing and hearing the parties being cross-examined. One is therefore placed in a difficult position in deciding the matter solely on the affidavit evidence.

The applicant is seeking a declaration that she is entitled to one-half share in the legal and beneficial interest, whereas the defendant/husband has contended that she is not entitled to more than a 25% interest. He has stated in his affidavit at paragraph 14 that at all times since the purchase of the matrimonial home, he has indicated to her that she had an interest in the property notwithstanding that the property was in his name.

It is not denied that the applicant worked many years in the United States of America as a registered nurse and that she returned to Jamaica in 1972. She stated that she had assisted the defendant in the funding of his studies at the University of the West Indies and that at the time of her return to Jamaica, both herself and her husband decided to purchase the matrimonial home for themselves and the children as they were a loving and devoted family.

She has further deposed that she provided the greater portion of the deposit. The defendant on the other hand deposed that at the time of purchase both had maintained a joint banking account into which they lodged funds and that it was from that account that the deposit was paid in equal shares. This property was bought in or about July of 1973.

She has also deposed that she was always a working person and one who would turn over her salary cheques to the defendant. She said that there was a pooling of funds from which all expenses such as mortgage, utilities, food and other living expenses as well as expenses for the education of the children were paid. She further stated that the defendant would give her house money from the pooled resources in order for her to purchase items for the house. She had changed several jobs over the years and in addition to her regular job, she began making and selling sheet sets which brought her a fairly good income and which she said was handed over to the defendant for him to manage.

The defendant has no doubt made steady progress in his career and he is currently General Manager of the Jamaica Unit Trust Services Limited. He admitted that during his course of study at the University the applicant did assist with the funding of his educational expenses as well as the family's domestic expenses which included the payment of some bills and the purchase of groceries. He denied however, that she alone took care of the family's financial needs as he worked part-time during his studies and from that income he took care of his personal expenses and to assist in the home.

The defendant further deposed that he had purchased the property in his sole name as he was advised by the institution where he worked that it would be easier for him to obtain a mortgage from

them. He further deposed that he was advised that he could make a will leaving the property to the applicant for her life and thereafter to their children. He said that he had discussed this with the applicant and it was agreed that they would proceed in this way. The applicant on the other hand, said that she was told by the defendant that her name would not go on the Certificate of Title as this would complicate things for him since he would be paying the mortgage instalments to his employers (The Jamaica Development Bank). She further stated that he told her that he would receive concessions, therefore, it would be easier for the bank to deal directly with him. He did obtain the mortgage and the monthly payments were deducted from his salary.

The defendant also stated that in 1990 he received an iterim loan in order to finance improvements to the home and that payment of this loan was made solely by him. Although the applicant agreed that improvements were done through a second mortgage she contended that the mortgage payments were made from their pooled resources.

Submissions

I am most grateful for the assistance given by both Counsel. Miss Johnson submitted that paragraph 7 of the defendant's affidavit showed the intention of the parties at the acquisition stage, that it would be for both jointly and thereafter to their children. This paragraph reads as follows:

“7. That at the time of purchasing the matrimonial home, I purchased the property in my name solely as I had been advised that it would have been easier and additionally that I could make a will leaving the property to the applicant for her life and thereafter to our children. That I discussed this with the applicant and it was agreed that we would do this.”

Mrs. Meikle- Gooden on the other hand submitted that the above paragraph should be restricted only to the applicant having an interest in the property without more and that it should not be taken to mean that it was intended that the parties were to have 50% respective shares.

Miss Johnson further submitted that there was no evidence as to any quantifiable contribution by the parties so the court should apportion the beneficial interest equally. She relied upon the cases of *Josephs v Josephs* RMCA 13 of 1984; *Harris v Harris* 1982 SCCA 1/81 and *Cooke v Head* 1972 2 All E.R 38. Mrs. Meikle -Gooden argued that these cases can be distinguished from the facts of the instant case because there is evidence of contribution (not just the initial deposit) but there is payment of the balance of the purchase price, hence the husband's contribution was ascertainable. She submitted that the pooled resources concept which the applicant deposed to in her affidavit in support of the maxim "equality is equity" is therefore dispelled by the husband.

Findings

The evidence is clear that both parties contributed to the deposit of the purchase price of the property in 1973. The defendant contends that it was an equal deposit taken from a joint banking account in the names of both parties. The applicant on the other hand contended that she provided the greater portion of the deposit. Unfortunately, she has not stated the proportion in which they contributed.

There is evidence from the defendant that the applicant met some of the household expenses but she contends that through the pooling of funds they were able to meet the mortgage payments and other expenses. The evidence is also clear that the mortgage instalments were deducted from the defendant's salary but I do believe that this arrangement was a matter of convenience since the defendant was entitled to certain concessions from his employer. The defendant denied that there was a pooling of salaries and from which all expenses were paid. I believe the applicant however, that although the mortgage was deducted from the defendant's salary, the mixed funds were under the control and management of the defendant. At paragraph 13 of her Affidavit she deposes that between 1982 and 1987 whilst she worked at Antillean Food Processors, there was a mixed pooling of resources between the defendant and herself. This paragraph has not been denied by the defendant.

The defendant has claimed that the funds for the home improvement were obtained from an interim loan of \$50,000.00 obtained by him from Jamaica National Building Society. I have not seen

any evidence of this loan reflected on the Title which the defendant has exhibited. There is reference however, to a mortgage of \$87,000.00 to Jamaica National Building Society on the 4th April 1991. It is also noted, that the applicant has deposed at paragraph 14 about a second mortgage on the matrimonial home and that the mortgage payments were made from the pooled resources. This paragraph has not been denied by the defendant.

There is unchallenged evidence therefore, in paragraphs 13 and 14 respectively of the applicant's affidavit that there was pooling of funds from which certain expenses were met.

It is my considered view that the applicant has been quite frank in her disclosure to this court. I do believe that there was this pooling of funds which was managed by the defendant and from which sums of moneys were taken to pay the bills for utilities, mortgage, food and other expenses for the family. I also accept the applicant's evidence that at the time of purchase she believed and trusted the defendant that he would make prudent business decisions on behalf of his family and this was the reason why she went along with the arrangement that the house should be registered in his name solely.

I do not accept Miss Johnson's submission that the proposition by the defendant about making a will leaving the property to the applicant for her life and thereafter to the children, is indicative of a common intention at the time of purchase that both would share equally. I do believe however, that his intention was clearly stated from the very outset when the property was purchased. From that early stage they had been pooling funds and maintaining a joint banking account. The defendant himself has stated that there was this joint account. Why would he then take the deposit from this account in equal shares if he did not intend sharing their interests equally? Why is he denying in some instances that there was a pooling of resources on her return to Jamaica? I am constrained to resort to the maxim "Equality is equity". This seems to be the only method to achieve a just result in this case. I further hold that any amount expended by the defendant to improve the property must be regarded as an accretion to the value of the property as a whole and it cannot be regarded as an accretion to the defendant's share alone. See *Patten v Edwards* SCCA 29/95 delivered 20th December

1996 and Muetzel v. Muetzel [1970] 1 All E.R. 443. It is also my considered view that the value of the pieces of furniture taken by the applicant cannot reduce the proportion of her interest in the matrimonial home.

Conclusion

In the circumstances, I hereby declare:

1. That the applicant is entitled to one-half share in the legal and beneficial interest in all that parcel of land now known as 23 Constant Spring Grove in the Parish of St. Andrew being part of land comprised in Certificate of Title registered at Vol. 279 Folio 43 ad being all the land comprised in Certificate of Title registered at Vol. 1046 Folio 682 of the Register Book of Titles.
2. That the property be valued by a reputable valuator and the cost of such valuation be borne by the parties equally.
3. That the said property be sold and the net proceeds divided between the parties equally.
4. That the Registrar of the Supreme court be empowered to sign any document effecting sale if any of the parties refuses or is unable to sign.
5. There be liberty to apply.
6. That there be costs of this application to the Applicant to be taxed if not agreed.