



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT E 69/1998

BETWEEN HOPE SALMON APPLICANT
A N D LAWRENCE SALMON RESPONDENT

Mrs. Sharon Eusim instructed by Chancellor & Company for applicant.

Miss Saverna Chambers for respondent.

Heard: *27th, 30th September &
9th November, 1999*

HARRIS, J.

By an Originating Summons dated the 10th February 1998, the applicant Hope Salmon sought declaration and orders under the Married Women's Property Act with respect to her interest in lot 62 Glenco Housing Scheme, Santa Cruz in the parish of Saint Elizabeth and in certain items of furniture and household appliances and equipment.

The parties were married on June 10, 1989 but had lived together in a common law union some time prior to the marriage. Two children were born to them. The first child was born on the 23rd August, 1981

and the second on the 10th October 1983.

In 1979 the husband purchased lot 62 Glenco Housing Scheme, Santa Cruz in the parish of St. Elizabeth. There is no dispute that the land was bought exclusively by the husband. A four bedroom, two-bathroom house which was subsequently built on the land now forms the subject matter of a dispute.

Affidavits and counter affidavits were filed by both parties. They both subjected themselves to cross-examination.

The wife's evidence is that she commenced a relationship with the husband in the latter part of 1979. They began living together in August 1981 shortly after the birth of their first child and construction of the house began in August 1981. She further stated that when they met she had been employed as a postal clerk earning \$85.00 weekly and that she was able to save from her salary and apply some of her savings towards the construction of a house and towards household expenses. Following the birth of their first child, they agreed that she should cease working so that she could take care of the family and the home. She resumed working in 1990 and expended additional sums on the construction of the house as the construction lasted over 10 years. She also resumed assisting with household expenses and later contributed to the purchase of fixtures, fittings

and items of furniture primarily from a home based business. It was further asserted by her that she participated in every aspect of the construction including expending manual labour, cooking for workers, and preparing payrolls.

She also stated that in 1991 both her husband and herself had discussion with a family friend Winston Richards with a view to placing her name on the title. This she declared was not implemented as they discovered that it would have been too costly so to do.

The husband averred that the applicant had made no contributions to the construction of the house as all the construction costs were borne by him solely. He asserted that construction of the house commenced in 1979 and not 1981. He refuted that his wife had been gainfully employed between the years 1979 to 1981. It was his further contention that his wife had no input by way of labour, contribution to the household expenses or otherwise.

He denied that he had any discussions with her or with anyone about her name being placed on the title.

The question to be settled in this case is whether the wife has acquired an interest in the house which was erected on the land, namely, lot 62 Glenco Housing Scheme. It is therefore incumbent on her to establish

that she is entitled to a share in the matrimonial home and not that she ought to be given a share because she is a wife.

In *Grant v Edwards* 1986 2 ALL OR 426 at 435 Mustill J said:

“The Law does not recognise a concept of family property, whereby people who live together in a settled relationship ipso facto share the rights of ownership in the assets acquired and used for the purposes of their life together. Nor does the law acknowledge that by the mere fact of doing work on the assets of one party to the relationship the other party will acquire a beneficial interest in that asset.”

A claimant to a beneficial interest in property in whom the legal estate is not vested, must demonstrate that it is held on trust by the party in whom the legal estate is vested, the effect of which would give rise to a beneficial interest to him or her. Such claimant must show that there was a common intention at the time of the acquisition of the property for the parties to share the beneficial interest and that it would be inequitable for the legal ownership to remain solely with the party in whose name title was issued.

Support to the foregoing proposition is given by *Viscount Dilhorne* in *Gissing v Gissing* 970/2 ALL ER 780 at 785 when he asserted: -

“I agree with my noble friend Lord Diplock that a claim to a beneficial interest in land made by a person in whom the legal estate is not vested and whether made by a stranger, a spouse or a former spouse must depend for its success on establishing

that it is held on trust to give effect to the beneficial interest of the claimant as a cestui que trust. Where there was a common intention at the time of the acquisition of the house that the beneficial interest in it should be shared, it would be a breach of faith by the spouse in whose name the legal estate was vested to fail to give effect to that intention and the other spouse will be held entitled to a share in the beneficial interest.”

In order to determine whether the wife is in fact entitled to an interest in the house, it is necessary to determine whether at the time of commencement of construction there was an agreement, or arrangement, or understanding between the parties that she should acquire the benefit of an interest in the house. It is also necessary to establish whether, the husband, by his words or conduct, induced the wife to act to her detriment in the belief that she would have secured a beneficial interest in the property.

It is crucial to establish at the outset, the date of the commencement of construction. The wife declared that it begun in 1981 but the husband stated that it was in 1979. The wife stated she had seen building blocks on the land in 1979. The husband exhibited receipts, bearing dates in 1975, issued in his brother's name, for materials which he alleged was for the building. He stated he had receipts at his home for other materials purchased by him but yet he failed to exhibit them. It is my opinion those receipts

issued in his brother's name are unconnected with the construction of the house.

The husband did not complete payment on the land until January 1981. It is highly unlikely that he would have proceeded to build until he had finalized payments on the land, which was done in two parts, in 1979 and 1981. Building approval from the relevant authority was granted in 1981 and although he said that he commenced building before approval was given, it is my finding that he started construction after approval granted. Further, in paragraph 18 of his affidavit of the 29th July 1998 he stated that "we in fact moved into this home 1991, 10 years after commencement of its construction." It is obvious that construction began in 1981.

I will now consider whether the wife had made any contribution towards the purchase of materials initially. She stated that the building was completed over a period of time. The work, she said, started in 1981, continued until 1983 when there was a seven year period of dormancy, save and except that the roof was installed in 1987.

She asserted that she worked as a postal clerk between 1979 and 1981 and had savings. There is conflict in her evidence as to when she ceased working. In cross-examination she initially said she had terminated her employment in or about March or April 1981 as she was experiencing

problems with her pregnancy. She also stated that in January 1981 when her husband completed the payment on the land she was not working.

Accepting however that she was employed in 1979 and ceased working on a date in January 1981 before the husband completed the payment on the land, did she purchase any materials? In cross-examination, when asked what items she bought she was hesitant to make any disclosure, and when pressed she announced she bought cement and nails. These were bought from her savings she asserted. At the time during which she worked she resided with her mother. She stated she assisted her mother with bills and also said she helped her with food bills only. I am not persuaded that the wife was truthful when she asserted that she had savings from which she had purchased materials. Further, on her evidence it has been shown that from the inception of the construction of the house the husband had been the breadwinner and the party on whom the burden of funding the construction rested. It is my view that the wife made no financial contribution by way of purchase of materials between 1981 - 1983.

A further question is whether she made any indirect contributions between 1981 - 1983. She stated that she assisted with filling rooms with stones. She admitted that her husband employed workmen. This being so, I

am mystified to comprehend why there would have been any necessity for her to have been engaged in this activity when workmen were employed. She declared that she cooked for the workmen but in cross-examination asserted that she cooked only when required, or cooked only on a Saturday, whenever she was employed. The husband stated that the workmen cooked for themselves and this I accept.

It is clear that she never assisted with household bills at this time. It is her evidence that her husband paid the rent and met household expenses during this period.

She initially stated that they agreed that she should cease working after the birth of their child so that she could concentrate on looking after the children and the house. This is in direct conflict with evidence given by her in cross-examination, when she asserted that she had stopped working because of a problem with her pregnancy had developed. Moreover, when she ceased working the parties had no children. On her evidence, they had not even been living together. This permeates and destroys the very fabric of her claim. It is plain that there was no agreement or understanding between them that she should discontinue work to take care of the family. It follows therefore that there could have been no common intention for her to benefit.

Did she make any contribution subsequent to 1983?

There is evidence to show that the erection of the house had reached bell course level in 1983. Construction commenced in 1981 and continued for a period of approximately 10-years. The wife stated that about 50% of the work had been done by 1983 and then there was a period of dormancy when no work was done save and except the installation of a roof in 1987. The evidence shows that the cost of roof was met by husband. The wife further said that she resumed work in 1990 at Santa Auto Electric earning a salary of about \$300 - \$350.00 per week and that she was employed there until March 1993 when she resigned. An employees' annual return and declaration submitted to the Ministry of Labour was exhibited by her. It shows that she worked during the years 1990 - 1992 and not 1990 - 1993. In 1990 her gross income was \$10,780. In 1991 her gross income was \$12,200 and in 1992 her gross income was \$23,000. It is untrue that she had worked with the company until March 1993. Further, it does not appear that she worked with the company for more than 2 months in 1992. It is also untrue that her weekly income ranged between \$300 - \$350.00. In 1991, the year she would have earned the highest income. Her weekly income, would have been approximately \$254.00 gross.

She emphasized that during the period she resumed work she

contributed significantly to the household expenses and assisted with purchase of fixtures, building materials, fittings such as faucets, food and clothing for the family.

So far as household expenses are concerned she must show' she had substantially contributed to them while house was being built.

In *Falconer V Falconer 1970 ALL.E.R 449 at 452 Lord Denning* stated: -

“Where reliance is placed on financial contribution to family expenses the contribution must be substantial”.

I reject her evidence that she had substantially contributed household expenses to enable husband to direct his funds into the building when she began working in 1990. On her own admission she declared that between 1990 to 1992 her husband gave her money to be applied to household expenses and that on occasions she utilised some for her own benefit. It is clear from the evidence that the burden of the household expenses rested on the husband even during the period when she was employed

In light of existence of material discrepancies in the wife's evidence which has fundamentally affected her credibility, reliance cannot be placed on her assertion that she purchased building materials such as cement, nail and board between 1990 and 1992.

She stated that these items were purchased from her salary

and from the proceeds of money in their joint account with Jamaica National Building Society. The husband stated that the funds in Jamaica National Building Society were deposited by him solely and this I accept.

It may be that she purchased faucets and lighting fixtures and assisted with the painting of the house. Mr. Carlos Townsend stated in his affidavit of the 17th September 1999 that in May 1990 he painted the verandah 2 bedrooms, and 1 bathroom and primed the rear eave of the house. Her husband did not deny that she assisted with the painting. However, any items purchased by her and the painting of the house cannot be classified as contributions by virtue of which she could qualify for an interest in the house.

It was stated by her that construction resumed after a 7-year dormancy, save and except for the addition of the roof in 1987. The husband denied that there was a 7-year dormancy period and stated that the roof was added in 1986. He exhibited documents showing the purchase of roofing material in November 1987. It is reasonable to infer that the roof was installed in 1987. Alpart with which the husband worked, closed between 1985 and 1989 but within 2 months after its closure, he was employed by Consolidated Engineering Limited. He said during that period, work was done on the house. This I accept. He received redundancy payment from Alpart in 1988.

On the wife's evidence the husband used some of the money to purchase materials. Surely, he would have continued building between 1985 and 1988 ,therefore, there would have been no 7-year period when no work was done.

The wife's statement that she prepared payrolls, I find preposterous. Three or four workmen were employed on this project; it would have been absolutely unnecessary for her to have embarked on preparation of any payroll. She ventured out on a home based business in 1993. In my opinion, this she began after the house was completed.

It was also declared by her that in 1991 her husband agreed to place her name on the duplicate certificate of title. This they discussed with a Mr. Winston Richards who stated that he could arrange for this to be done at a cost of \$3,000.00. This however was not pursued as it was found to be too expensive at the time. The husband denied that such a conversation had taken place.

On the balance of probabilities, this discussion could have taken place. In my opinion this would have been in 1991, on which date, the house would either have been completed, or in an advanced stage of completion. A mere common intention at that time would not be sufficient to ground the wife's claim to entitlement to an interest in the house. There

are a preponderance of authorities which illustrate that such a conduct, act, or promise as that outlined by the wife, should be made at the time of the acquisition of the property and the claimant must have acted to her detriment.

I will refer to two cases which clearly demonstrate the foregoing requirement. The first is *Eves v Eves 1975 3 ALL OR 768* . In this case the plaintiff led the defendant to believe that she would have an interest in property which he told her at the time of its acquisition that her name had only been omitted from the title because of her age. Acting on the belief that she would have acquired an interest in the property in return for her labour. she contributed to the repairs and improvement of the house. She was accordingly granted an interest in the property.

Similarly in *Grant v Edwards and Anor 1986 2 ALL OR 426*, a defendant acquired a house in his name and at the time told the plaintiff that her name would not be on the title deeds as this may prejudice her pending divorce proceedings. He led her to believe she was acquiring an interest therein and as a result she substantially contributed to mortgage installments by substantial contributions to household expenses. It was held that she had acquired a beneficial interest in the property.

There are the exceptional cases where common intention may arise subsequent to the acquisition of the property. It is my view that in the present case, the wife, to bring herself within the parameter of the exceptional cases, must establish that she had made substantial contributions directly or indirectly to the construction of the house based on the promise by the husband that her name would have been placed on the title had the cost not prohibited him from so doing. This she has failed to show, and that she had acted to her detriment in the reasonable belief that he would have placed her name on the title.

It is my view that the wife has not demonstrated that she has made any direct or indirect contributions to the construction of the house from which it can be inferred that there was a common intention that she should acquire a beneficial interest in it, or, that there were any events which occurred after construction began from which it can be inferred that she suffered any deprivation ,or, there was any act done by her to her detriment which would raise a trust in her favour with respect to 62 Glenco Drive, Santa Cruz. Her claim to a beneficial interest in the property fails.

I will now make reference to the claim with respect to her purchase

of certain fittings, items of furniture and household articles from her resources when she travelled overseas, as well as from her home based business which she began in 1993. I accept her evidence that she purchased those items and find she is entitled to the following: -

Curtains , curtain rods ,faucets, linen, blinds, paintings, 3 double beds, a 5 drawer dresser, 1 crib, two 3 piece settees, 2 hassocks, 2 coffee tables, 1 Panasonic colour television, 1 ceiling fan with lights,1 super deluxe table model fan, 1 silver cosmetic tray, figurines, stuff toys, vases with flowers, pots, dishes and cutlery and it is declared that she is the beneficial owner of all these items.