

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN EQUITY  
SUIT E. 269/91

BETWEEN                      BLONDELL SHIRLEY                      APPLICANT  
A N D                              ADRIAN SHIRLEY                      DEFENDANT

MR. A. PEARSON INSTRUCTED BY PLAYFAIR JUNOR PEARSON FOR DEFENDANT  
MR. GORDON STEER AND MR. CARL DOWDING INSTRUCTED BY KNIGHT  
PICKERSGILL DOWDING AND SAMUELS FOR PLAINTIFF,

IN CHAMBERS

SUMMONS TO VARY ORDER

HEARD: JULY 26, 1995, SEPTEMBER 27, 1995

HARRISON J. AG.

This matter concerns an application to vary an Order relating to the division of matrimonial property, made by this Honourable Court on the 28th January, 1993. I had reserved judgment on the 26th July, 1995 as it was my considered view that important issues had arisen for further deliberation. It was not possible for me to have delivered judgment before the Term ended, so, I apologise for the delay and now seek to fulfil my promises.

In order to appreciate the situation fully it seems to me that I should begin by setting out the events leading up to this application.

On the 20th August, 1991 Blondel Shirley, the defendant's wife, filed an Originating Summons under the provisions of the Married Women's Property act seeking inter alia, a declaration as to their interests in respect of certain properties including 12 Farringdon Drive, St. Andrew the matrimonial home, and Emile in St. Catherine. The orders sought on this summons read as follows:

- "1. What is the respective interest of the Applicant and Defendant in the abovementioned properties and furniture and equipment.

2. That the Defendant should take no steps by sale assignment to have (sic) in the said properties and furniture, fixtures and equipment or do any act whatever to create any right title or interest therein.
3. An order that a Report on and valuation of the premises to be taken or alternatively that a valuation agreed upon by the applicant and the defendant be taken.
4. AND GENERALLY for a still (sic) further order that the defendant be restrained from acting with regard to the said properties to the prejudice of the Applicant.
5. Such costs as are incidental to the proceedings."

The Originating Summons came on for hearing before Reckord J, who, on the 18th June, 1992 delivered judgment. He declared inter alia, that the respective interests at 12 Farringdon Crescent, St. Andrew, and premises at Friendship, St. Catherine, were held by the parties in half-share each. It was further ordered that if a valuation of them should be done by a valuator agreed upon by the parties.

There seemed to have been further dispute between the parties regarding these properties so, on the 20th November 1992, Blondel Shirley filed a summons headed "Summons to Proceed under Order for Determination of Property Dispute Between Husband and Wife." On the 28th January, 1992, this summons came on for hearing before Courtenay Orr J, who made the following order:

- "1. That the defendant do give access to prospective purchasers to enter, inspect and view whether by themselves or with agents, premises situate at Farringdon Drive, St. Andrew and Emile, St. Catherine.
2. That the Registrar of the Supreme Court is empowered to accept on behalf of the Defendant the highest offer from prospective purchasers for both premises abovementioned.

3. That the Registrar of the Supreme Court is empowered to execute on behalf of the Defendant, any Agreement for Sale, Instrument of Transfer and any other relevant document necessary to effect sale and transfer of the aforementioned lands.
4. That the Registrar of the Supreme Court is empowered to agree all accounting of monies, and to agree the net sums payable to the Defendant.
5. That the Registrar of the Supreme Court is empowered to agree all commissions, fees and other outgoings involved in the advertising, valuation and sale of the abovementioned lands and to act as the Defendant's Attorney in all matters pertaining to the said lands.
6. That all costs of and incidental to this, as well as all costs incidental to necessitate the sale and transfer of the said lands be paid out of the sale price.
7. That the defendant, his servants or agents are restrained from obstructing, interfering with or molesting, the Applicant, her servants, agents and invitees, as well as prospective purchasers, in the entering and viewing of both premises, the subject of this action.  
.....
9. Liberty to apply.
10. That this order be stayed until the 1st day of March 1993.
11. Costs to the Plaintiff to be agreed or taxed."

On the 21st March 1995, a summons headed "SUMMONS TO VARY ORDER" was filed on behalf of the Husband/Defendant. It sought to vary the above order made by Courtenay Orr J, on the 28th January, 1993. This summons was set for hearing on the 4th May, 1995 but was adjourned. It was re-issued for hearing on the 3rd July, 1995 but Theobalds J., adjourned

it sine die and for a date to be fixed in consultation with the Registrar. The matter was set for hearing on the 24th July, but finally heard by me on the 26th July.

The summons to vary the order of Courtenay Orr J. (supra) seeks to include an additional paragraph which reads as follows:

"12. That the defendant be given the opportunity of acquiring the applicant's one half share in premises 12A Farrington Crescent and Kitson Town, St. Catherine upon the same terms as any prospective purchaser before the signing by the Registrar of any agreement for sale, instrument of transfer or other relevant document."

Evidence has further disclosed that the property at Farrington Drive, St. Andrew was sold for Eleven Million Dollars to a third party since the husband was unable to complete an Agreement for Sale in respect of his wife's share in the properties. A sale agreement had been duly executed by the purchaser and Registrar of the Supreme Court and finally an Instrument of Transfer was executed on behalf of the Husband/Defendant by the Registrar of the Supreme Court which was returned to the Applicant's Attorneys at Law by letter dated 6th July, 1995. At the hearing of the summons to vary, Mr. Dowding undertook not to register the transfer at the Registrar of Titles Office until a decision was arrived at on this summons.

#### AFFIDAVIT EVIDENCE

The defendant/husband filed an affidavit sworn to on the 18th May, 1994 which he has relied upon in support of his application. The relevant paragraphs are:

- "3. That on the 28th January, 1993 this Honourable Court made an order in terms of a Summons filed by the Applicant herein.
4. That since that time I have expressed my intentions of acquiring the Applicant's one half share of premises 12A Farrington Drive (sic) Kingston 6 in the parish of Saint Andrew.

5. That I have requested of the Applicant through her Attorneys at Law, an Agreement for Sale in order that I might pay a deposit and conclude arrangements for a mortgage in order to complete the purchase.
6. That the first such request was made by letter of the 23rd February, 1993, I again requested a copy of an Agreement for Sale, and I exhibit herewith marked AS1 a copy of that letter.
7. That subsequently by letter of the 2nd April 1993, I again requested a copy of an Agreement for Sale, and I exhibit herewith marked "AS 2" a copy of that letter.
8. That several requests have been made since then, but none has been acceded to until 18th March, 1994 and I exhibit herewith marked "AS 3" a copy of that letter.
9. That during the period the value has escalated from 4.5 million dollars to 11.6 million dollars.
10. That through no fault of my own I am being called upon to pay one half of the additional amount to purchase the Applicant's share in the premises.
11. That over the period since February, 1993 prospective purchasers have been coming to my home seeking to inspect the premises at times inconvenient to me, and disruptive of my domestic schedule.
12. That as a consequence of the foregoing, I respectfully pray that this Honourable Court will vary the order made herein on the 28th January, 1993."

The relevant paragraphs of the Affidavit of Carl Dowding, filed in response to this application and sworn to on the 30th June, 1995 are as follows:

- "4. That from the outset of this Firm's involvement with this matter, the applicant had indicated that she

had no interest in and offered her share in, the Farringdon Drive premises to the defendant. I attach hereto copy letter to Adrian Shirley dated 14th January, 1987 marked "CD 1".

5. That the defendant, through his Attorney at Law indicated his willingness to purchase the applicant's share in the premises. I attach hereto the copy of letter to Mrs. Blondel Shirley dated February 25, 1987 marked "CD 2"

.....

7. That the defendant once again indicated his willingness to purchase the applicant's interest in both properties, shortly after judgment was delivered in the Originating Summons. As on previous occasions the defendant did nothing towards concluding the purchase. I attach hereto copy of letter dated October 2, 1992 marked "CD 3". As a consequence of the defendant's vacillation, I listed the property with several Real Estate Dealers. I also obtained a valuation for both the Farringdon Drive premises and lands at Emlie, St. Catherine and sent it along to the defendant's Attorney at Law, I attach hereto copy letters dated 18th August, 1992 and September 22, 1993 "CD 4".

8. That the defendant again changed his mind about purchasing the applicant's share in the Farringdon Drive and Emlie St. Catherine properties, as evidenced in letter dated 1st July, 1992 a copy of which is attached and marked "CD 5". Meanwhile I continued to receive offers from interested persons which I sent along to the defendant's Attorneys at Law. I attach hereto letters dated 5th October, 1992 and 11 September, 1992 marked "CD 6" and offer to purchase dated 2nd November, 1992 marked "CD 7".

9. That by letter dated 23rd February, 1993 the defendant through his Attorney at Law made an offer to purchase

the applicant's share in Farrington Drive for \$2,550,000.00.

This was an unrealistic gesture as:

- a. Messrs D. C. Tavares & Finson had submitted an offer to purchase the premises for \$5,600,000.00 on 2nd November, 1992 with completion in 90 days of which the Defendant was aware, and
- b. The offer by the defendant was lower by \$550,000.00 and completion set for 120 days.

I wrote to the defendant's Attorney at Law pointing out the unacceptable nature of the offer, and attach copy of letters dated 23rd February, 1993 and March 3, 1993 marked "CD 8".

10. That I continue to receive offers to purchase the premises and increasingly higher amounts. In late October 1993 my client instructed me to prepare an Agreement for Sale which was signed by a prospective purchaser and a deposit paid. I sent the sale agreement to the Defendant's Attorney at Law on 9th November, 1993 inviting the defendant to execute the Agreement, he declined. By letter dated November 23, 1993 indicated he once again wished to purchase the Applicant's share, I attach hereto copies of letters dated 9th November and 23rd November, 1993 marked "CD 9".

11. That at a meeting with the Defendant's Attorney at Law in February, 1994 I pointed out that my client was convinced that the defendant could not, or would not purchase the one half share in both properties, and as a consequence the Applicant had instructed me to sell to any interested third party. The Defendant's Attorney at Law advised that the defendant was ready and able to conclude the purchase. Letter dated March 1, 1994 I sent copy valuation and Agreement for Sale to the Defendant's Attorney at Law whereby the applicant agreed to sell her interest in Farrington Drive. A reminder was sent on 5th April, 1994, I attach copies

hereto marked "CD 13" copies of letters dated 25th May, 1994 and valuation report dated May 1994.

14. That in a telephone conversation with Mr. W.A. Pearson the Defendant's Attorney at Law, I was assured by Mr. Pearson that the defendant was ready to sign the Agreement for Sale. I agreed to allow the defendant additional time to sign the Agreement. I attach copy letter dated 9th August, 1994 marked "CD 14". The defendant again failed to live up to his word resulting in my letter to his Attorney at Law dated 20th September 1994, a copy of which is attached hereto marked "CD 15".
15. That in or about the month of March 1995 I received an offer from Millsborough Developers Limited of 20 Constant Spring Road, Kingston 10, for \$11,000,000.00. I spoke with my client, the applicant, on the telephone and she instructed me she would accept the offer and I should prepare the necessary Agreement for Sale. This was done. I attach hereto marked "CD 16" copy of Agreement for Sale duly stamped and dated 8th June 1995. The purchaser has paid the full purchase price and half cost transfer, and has signed the Instrument of Transfer which has been sent to the Registrar of the Supreme Court for execution by her.

.....'

No Affidavit was filed in response to Mr. Dowding's Affidavit referred to above.

#### SUBMISSIONS

Mr. Pearson submitted that notwithstanding that the sale agreement and instrument of transfer have been signed by the purchaser and Registrar of the Supreme Court, the Court should in the interest of justice and pursuant to sections 270 and 677 respectively of the Civil Procedure Code, vary the order sought by the defendant/husband.

Mr. Pearson argued that the defendant was not notified of the intended sale to this third party and that it would have been unjust to have the registered proprietor and co-owner in possession have his interest in the very premises parted with, without actual notice to him. He contended that the order of the 28th January, 1993 appointed the Registrar of the Supreme Court, Attorney for the defendant in respect of all things to be done in relation to the premises at Farrington Drive and Emlie in St. Catherine. Further he says, this would cast an onus upon the Registrar to ensure that the defendant as principal is made aware of the signing of an agreement of sale or instrument of transfer on his behalf.

Mr. Pearson also submitted that the order of the 28th January, 1993 was not an order for the sale of realty and that there was no order for the sale of realty in this case. From his point of view, the above order, upon its proper construction was one for the Registrar of the Supreme Court to act as the defendant's Attorney/Agent. He further submitted that if the defendant declared his own intention to purchase the wife's share, the property must first be offered to him and if he refuses to purchase, then and only then an agreement could be concluded with a third party. Mr. Pearson contended therefore that since this procedure was not followed the Court would be entitled to treat the Registrar's signing the abovementioned documents as void if not voidable. On the other hand, so argues Mr. Pearson, "If the defendant is to buy, the defendant himself would be competent to execute an agreement for sale from himself as part owner to himself as purchaser and the role of the Registrar would be redundant. The role of the Registrar in this order only takes effect if the defendant refuses to sign."

Mr. Pearson further submitted that if in March 1994 the value of the property at Farrington Drive was fixed at \$11.6M, then an agreement in June 1995 to sell for \$11M was at a price below the March valuation and would not be in accordance with the valuation. It was further contended by him that if the \$11M was accepted as the sale price in 1995, then

the 1994 valuation supports the defendant's contention that a valuation of \$11.6M in March 1994 was excessive.

He finally submitted that if the order of the 28th January 1993, refers to Farrington Drive and the premises is in fact Farrington Crescent, that order would be defective.

In the circumstances, it was Mr. Pearson's view that the Court was entitled to vary the order of the 28th January, 1993 in the interest of justice. He argued that in the alternative or in conjunction with the order sought, the Court should set aside the Registrar signing of the Agreement for Sale and Instrument of Transfer as they are not within the intendment of the order, it not being an order for sale.

In response, Mr. Steer submitted that the order of Reckord J. had dealt with the determination of the interest of the parties but because the defendant made no meaningful offer to purchase his wife's share the matter had to be brought back to the Court for directions on how to proceed, hence the order of the 28th January, 1993. He contends that the defendant cannot now say that he was not aware that the latter order was one for the sale of the premises even though no direction was given for the defendant to purchase his wife's share.

It was further contended by Mr. Steer that the Affidavit sworn to by Mr. Dowding in response to the Defendant's affidavit was served on the defendant's Attorneys on the 3rd July, 1995 and that this affidavit was served prior to the execution of the Transfer by the Registrar. He thus argued that if the defendant was serious about purchasing the wife's interest he could have made his application and forwarded his cheque, but he had never put himself in a position to purchase her share. He argued that the Court should not exercise its discretion in favour of the defendant as it was simply a delay tactic on his part.

He submitted that there was no duty on the part of the Court to offer the premises for sale to the defendant at any point and there was no order for him to be given a first option to purchase. He contended

that section 16 of the Married Women's Act called for a determination of the respective interests of the parties in the property but the section does not empower the Court to say to whom any item of property is to be given. He referred to Rayden on Divorce 15th Edition, page 1125 para. 8 under the heading "Determination of rights between husband and wife" where it is tested:

"The question for the Court is whose is this and to whom it shall be given."

Mr. Steer finally submitted that the Court cannot give the defendant the first option other than by consent of the parties. Further, that since the property was offered to him on more than one occasion, he ought not to be given the first option to purchase.

#### FINDINGS

One of the issues and perhaps the most important one for determination is whether or not there had been an order for the sale of properties at 12A Farringdon Drive, St. Andrew and at Emlie in the parish of St. Catherine.

Putting it, I hope quite rightly, the wife/applicant by her Originating Summons sought a declaration of the parties' interests in the aforesaid properties. The Court had declared that the parties held equal shares in the properties and although Mrs. Shirley did not seek an express order for the sale of these properties, by virtue of the Court's declaration the parties were now in my view, holding their interests as tenants in common. As tenants in common, there is every likelihood that she could have sold her share in the properties, but could she sell the whole to a third party without the consent of her co-tenant? Undoubtedly, this could not have taken place without both parties consenting or the Court ordering a sale to take place.

The evidence also revealed that at a time of filing the Originating Summons, the parties marriage had already been dissolved on the 22nd November, 1990.

There is a provision in the Married Women's Property Act for the Court to declare the interest the parties hold in real property and the Court is also given to power to order the sale of such property. See Sections 16 and 17 respectively of the Married Women's Property Act.

Section 16 states inter alia:

"16. In any question between husband and wife as to the title to or possession of property, either party ..... may apply by summons or otherwise in a summary way to a Judge of the Supreme Court ...and the judge... may make such order with respect to the property in dispute, and as to costs of and consequent on the application, as he thinks fit..."

Section 17 which is an extension of section 16, provides at subsection 7:

"7. For the avoidance of doubt it is hereby declared that any power conferred by section 16 to make orders with respect to any property includes power to order a sale of the property."

Where the Court orders the sale of realty Rule 17Q of the "Supreme Court General Rules and Orders" states as follows:

"All Sales, whether of real or personal property, directed by the Chancery or the Incumbered Estates Division of the Court, shall take place before the Registrar as heretofore, and under his orders and superintendence, subject to the direction of the Court."

This provision shows very clearly in my view, that the Registrar of the Supreme Court must act in accordance with directions of the Court. A Fortiori, The Registrar cannot pass title or deal with any interest in realty unless there is an order for the sale of such realty.

In the instant case, Reckord J. had only declared the parties' interest in the properties with a further order that the properties be valued. But, as I have stated earlier, even though there was no express order for the sale of the properties the parties knew what were their respective shares and rights in the properties. Accordingly, Exhibit "CD 9", letter dated November 23, 1993 from Mr. Pearson and referred to at paragraph 10 of Mr. Dowding's affidavit states inter alia:

"It is my understanding of the Order made in suit 1991/E269 by Reckord J. that a valuation be done

of premises at Kitson Town and Farrington Drive and for either party to purchase the other party's share."

How does one construe the order of Courtenay Orr J.? It is my considered view that this order is ancillary to the order of Reckord J. It is important that I repeat this order. It states as follows:

- "1. That the defendant do give access to prospective purchasers to enter, inspect and view whether by themselves or with agents, premises situate at Farrington Drive, St. Andrew and Emlie, St. Catherine.
2. That the Registrar of the Supreme Court is empowered to accept on behalf of the Defendant the highest offer from prospective purchasers for both premises abovementioned.
3. That the Registrar of the Supreme Court is empowered to execute on behalf of the Defendant, any Agreement for sale, Instrument of Transfer and any other relevant document necessary to effect sale and transfer of the aforementioned lands.
4. That the Registrar of the Supreme Court is empowered to agree all accounting of monies, and to agree the net sums payable to the defendant.
5. That the Registrar of the Supreme Court is empowered to agree all commissions, fees and other outgoings involved in the advertising, valuation and sale of the abovementioned lands and to act as the Defendant's Attorney in all matters pertaining to the said lands.
6. That all costs of and incidental to this, as well as all costs incidental to necessitate the sale and transfer of the said lands be paid out of the sale price." [Emphasis supplied].

Upon a proper construction of the above order it would be reasonable in my view to conclude that the learned trial judge had ordered the sale of these properties and had given directions concerning their sale. I therefore

disagree with the submissions raised by Mr. Pearson that there was no order for the sale of realty.

The position as it stands now is that the property at 12A Farringdon Drive has been sold. The purchasers have not intervened in the matter before me and neither is there any allegation in relation to the propriety or otherwise of that sale. Mr. Pearson is asking this Court however, to set aside the Registrar's signing of the Agreement for Sale and Instrument of Transfer. It was his contention that the Registrar of the Supreme Court, being the Attorney for the defendant as stipulated by the abovementioned order, ought to have advised him of the events prior to signing on his behalf. It is somehow startling however that Mr. Pearson has made this submission as letter Exhibit "CD 14" dated August 9th, 1994 and referred to in paragraph 14 of Mr. Dowding's affidavit seems to refute this contention. This letter states inter alia:

"We refer to our letter of the 9th June 1994 and to a subsequent telephone conference Dowding/Pearson on the 18th August 1994. We have a firm purchaser for premises at Farringdon Drive and we are ready to proceed to the Registrar of the Supreme Court for him to sign the Agreement for Sale and Transfer on behalf of Adrian Shirley, in keeping with the order of the Court dated 28th January, 1993.

Your Mr. Pearson has indicated that Mr. Shirley is now prepared to sign and return the Agreement for Sale previously sent to you together with the relevant deposit and we invite you to let us have these documents in hand no later than close of business on 10th August 1994 failing which we will proceed to the Registrar of the Supreme Court without further reference to you....."

The above letter was never contraverted by the defendant/husband. I therefore hold that there is no merit in this submission. Furthermore, there

is no affidavit evidence before me alleging any impropriety regarding the sale. On the face of it therefore, the purchasers appear to be bona fide purchasers for value. The phrase "Omnia praesumuntur legitime facta donec probetur in contrarium" (i.e. "All things are presumed to have been legitimately done, until the contrary is proved") is quite appropriate.

But what of the conduct of the parties? The evidence has clearly revealed that Mrs. Shirley was prepared from the very outset, that is, before the filing of the Originating Summons and certainly immediately after the order was made by Reckord J., to dispose of her interest in the properties. The husband was prepared to buy, hence there was continuous dialogue between the parties and their Attorneys and time slipped away. The evidence has further revealed that he has been given ample opportunity to purchase his wife's share in the properties. He had offered to purchase her share in Farrington Drive, by letter dated 23rd February, 1993, for a sum of \$2,550,000.00. This offer was regarded as an "unrealistic gesture" since there were offers in November 1992 by third parties amounting to \$5,600,000. Time continued to slip away and by mid 1994, the valuation of the said property stood between \$7,500,000.00 to \$11,600,000.00.

The defendant complained that during the period of discussions the value of the premises had escalated from 4.5 million dollars to 11.6 million dollars and through no fault of his he is being called upon to pay one half of the additional amount to purchase his wife's share. But the evidence has revealed the following sequence of events:

A. Exhibit "CD 10", letter dated 1st March, 1994 sent to defendant's Attorneys, states inter alia:

"Reference is made to a conference at 33 Duke Street on the 28th February which was attended by Mr. Gordon Steer, Mr. Anthony Pearson and the writer. We wish to confirm that the following was agreed:

1. Dowding is to obtain from C.D. Alexander Co. Realty Ltd. a review of valuation done on premises 12A Farrington Drive. The review to be done as at 28th February, 1994.

2. Upon receipt of the updated valuation, Dowding will prepare an Agreement for Sale whereby Mrs. Shirley will sell her interest in Farringdon Drive to Mr. Shirley, the consideration being one half of the value as at the 28th February, 1994. The Agreement for Sale shall have the usual terms and conditions, all costs to register transfer to be equally shared, completion set for ninety(90) days, letter of commitment to be presented within forty-five(45) days, time to be of the essence of the contract."

B. Exhibit "CD 12", letter dated 18th March, 1994 to the defendant's Attorneys forwarded a copy of the letter quoting the present valuation by C.D. Alexander and Sale Agreement requesting Mr. Shirley to sign the Agreement promptly and return same with the deposit.

C. Exhibit "CD 12", another letter sent to the defendant's Attorneys referred to the letter of the 18th March 1994 and was asking for a response within seven (7) days.

D. Exhibit "CD 13", letter dated 9th June, 1994 which was sent to the defendant's Attorneys states inter alia:

"We again invite your client to sign the Agreements for Sale sent to you under cover of our letter dated 18th March 1994 and to return the signed Agreement no later than 20th June 1994. If your client fails to take up the offer, we have others for more money which will proceed to treat with immediately."

E. Exhibit "CD 14", letter dated 9th August 1994 and addressed to the Defendant's Attorneys states inter alia:

"We refer to our letter of the 9th June, 1994....."

Your Mr. Pearson has indicated that Mr. Shirley is now prepared to sign and return Agreement for Sale previously sent to you together with the relevant deposit and we invite you to let us have these documents in hand no later than the close of business.."

Finally, exhibit "CD 15", letter dated 20th September, 1994 which was sent to the defendant's Attorneys states inter alia:

"As you are aware we had intended to deal with the sale of premises Farringdon Drive strictly in accordance with the order of the Supreme Court. After discussions with your Mr. Pearson, the writer agreed to forgo offers made by interested parties and instead to prepare an Agreement for Sale in favour of Mr. Adrain Shirley. This Agreement for Sale has been sent some time ago and at the time of

writing, we are advised that Mr. Shirley has neither signed the agreement for Sale nor has he paid in a deposit to your office this despite written and oral reminders to your office on an almost daily basis...."

These letters have not been contraverted and they tell quite vividly what had transpired over the months culminating with the sale of Farringdon to some one other than the defendant.

I do agree with Mr. Steer's position that the question for determination by the Court under section 16 of the Married Women's Property Act is, "Whose is this property" and not to whom shall it be given. But, it is my considered view that where there is an order for the sale of realty in matrimonial proceedings and one of the parties is residing in the matrimonial home at the time of the proceedings before the Court, he or she should be given the opportunity to purchase.

There has been considerable delay since further directions were sought and obtained on the 28th January 1993, and the value of the realty has escalated. But it is common knowledge in Jamaica today that the price of realty is spiralling and with the delays evidenced above, one wonders whether or not Mr. Shirley has serious intentions to purchase these properties. The evidence further shows where he has been given several chances to purchase to the extent where potential purchasers were bypassed in order to facilitate him. He was given extra time to complete but he failed to live up to his words. I hold the view therefore that he is far from being serious about concluding a sale. In light of this conduct, and having regard to the sale which taken place to this third party, I am of the view that I should not exercise my discretion in his favour and his application to vary the order ought to be dismissed.

It is therefore ordered that the summons to vary be dismissed with costs to the wife/applicant to be taxed if not agreed.

There shall be liberty to apply.