

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E 74/1985.

BETWEEN	SYBIL SOUZA	APPLICANT
AND	OSBOURNE GEORGE SOUZA	RESPONDENT

Mr. Gordon Steer for Applicant.

Miss Dorcas White for Respondent.

Heard: 31st October, 1991 and 31st January, 1992.

JUDGMENT

RECKORD, J.

The applicant under provisions of the Married Womens' Property Act has asked the court to determine the ownership of certain lands at Rhymesbury in the parish of Clarendon as a result of dispute between herself and her former husband the respondent.

The parties lived and worked together on leased lands at Woodliagh District, Clarendon. They got married in 1956 and continued cultivating the leased lands. When the government owned lands at Rhymesbury was offered for sale both parties claim that each applied in 1960 to purchase a portion of the said land. The applicant claims that the respondent "pre-empted me and went into the office of the Ministry of Agriculture without my knowledge and purported to enter in arrangement to have the sale done in his name alone."

In 1961 both parties entered into possession of the Rhymesbury property and occupied a one room shed where they remained for some two years. During this time the respondent sold certain lands he owned and used some of the proceeds towards purchasing building materials for the construction of their home.

The applicant avers that she contributed towards the construction of the house, assisted on the farm and managed the farm in 1963 during a period when respondent had left the matrimonial home. She left the island in 1972 and did work there to raise money to repay defendant's loan as the bank

threatened to sell the land. She sold lands she had at Osbourne Store and used the proceeds on the farm. When she returned to Jamaica later that year, she cleared off the debt at the bank and resumed working on the farm.

In 1973, the respondent returned to the island and forced her off the farm. She is now asking the court to declare that the property is jointly owned by herself and the respondent and that the property be sold and her interest paid to her.

In a subsequent affidavit the applicant exhibited a photocopy of a letter written by the respondent to the Commissioner of Lands instructing him to have the title issued in the names of both himself and the applicant.

She also exhibited affidavits from Mr. Mervyn Morris, J.P. of May Pen, Clarendon, Hilda Hines and Vernon Morris, all testifying to the considerable amount of work done by the applicant on the farm.

The respondent in his affidavit, denies that the applicant was ever a farmer, denies forcing her from the matrimonial home, denies that she did any work on the farm, denies she ever repaid any of his loans and asserts that the applicant paid no part of the instalments in the acquisition of the land and therefore has no interests in the premises and not entitled to the relief claimed. He further contends that at the time the applicant filed this claim the title to the land was then vested in the Commissioner of Lands.

With reference to the letter to the Commissioner of Lands the respondent admits signing the letter, but that he did so under pressure from the applicant who knew he had a nervous condition and could not withstand continuous nagging.

In giving viva voce evidence under cross-examination the applicant admitted she never made any direct payment to the Commissioner of Lands but she gave money to the respondent to pay - She never paid any of the deposit. She denied nagging respondent to sign and said she saw him sign it and he handed it to her to deliver to the Commissioner of Lands.

In his viva voce evidence the respondent stated that applicant never helped him in his chicken and egg business on the farm. He then contradicted himself that applicant would help in the chicken business by selling and

collecting money for chicken and eggs. She took that money for herself and in addition he gave her weekly sums for her maintenance. He could not recall date he signed the letter to the Commissioner of Lands but admitted telling the applicant that, "When the lands were paid for her name would go on the title if we living together as man and wife." He afterwards went to the office of the Commissioner of Lands and asked him to comply with the letter, but was told that he could not comply with the letter, until final payment was made.

Submissions

Mr. Steer for the applicant submitted that three deponents attested to the hard work which the applicant did on the farm. Although on respondent's case the applicant was only a housewife, he admitted under cross-examination that while he out on the road selling, his wife was at home also selling 5 days per week but that she pocketted all the money.

At the time of acquisition of the property the respondent admitted it was his intention to put his wife's name on the title - Acquisition was when they were placed in possession. Applicant has acted to her detriment based on the intention of the parties.

He referred the court to judgments in the following cases.

Johnson v. Johnson & Swaby 2283/86 dated 23rd June, 1989.

Grant v. Edwards and Another (1960) 3 WLR 127.

Nixon v. Nixon (1969) 3 AER p. 1133.

Josephs v. Josephs - RSCA No. 13/84

For the respondent Miss Whyte submitted that the property was not acquired until all the payments were made. At the time of the transaction there was no common intention. The attempt by the respondent to have the applicant's name on the title was contrary to rule 19 of the schedule on the application form as the permission of the Commissioner of Lands had not been sought and obtained.

During the subsistence of the marriage the applicant was acquiring property of her own. She was not acting to her detriment but kept the proceeds from the sale of eggs and chickens for herself.

The final payment was made on 22nd December, 1986. The applicant left the home in March 1973 -- If she was entitled to any interest it would be limited to that time.

The applicant had failed to make out any case in support of any interest and the summons should be dismissed.

Conclusion

Based on the evidence given the applicant asks for an order

- (a) That this Honourable Court declares that the applicant has an equitable interest in the said premises in such proportion and or ratio as the court deems fit.
- (b) That the said house be sold and the proceeds therefrom be divided between the applicant and the respondent in such ratio and or proportion as the court declares.

The first question that the court must answer therefore is "Does this applicant have an equitable interest in this property? In arriving at an answer the court must consider and determine what were the intentions of the parties at the time the land was acquired. The applicant admits she was not present when respondent signed the application form. She never paid any of the deposit -- that she never made any direct payment of the instalments. There was no evidence from her that they discussed the acquisition of the land or any agreement as to ownership of the said land.

There is no evidence from the respondent as to his intentions when he acquired the land.

In Gissing v. Gissing (1978) 2 AER at p. 793 (g). Lord Diplock said:

"Where the wife has made no initial contribution to the cash deposit and legal charges and no direct contribution to the mortgage instalment nor any adjustments to her contribution to other expenses of the household which it can be inferred was referable to the acquisition of the bank, there is in the absence of evidence of an express agreement between the parties, no material to justify the court in inferring that it was the common intention of the parties that she should have any beneficial interest in a matrimonial home conveyed into the sole name of the husband."

Upon what basis then is the applicant asking the court to make an award in her favour? On her own evidence and the evidence of three (3) witnesses she had done considerable amount of work on the farm and in the

building of the matrimonial home. She "carried water to mix mortar, carried concrete block, stacking tiles, ordering material, fixing meals for the workmen, filling the floor with sand for tiles to be laid and helped in painting the house." On the farm she operated the tractor and trailer, planted pumpkin and peas, and assisted in rearing chickens and assisted in the egg trade. She took care of the house and managed the farm while respondent was away for three months. She went to Canada and worked to raise money, to repay respondent debts and on her return to Jamaica continued working on the farm. She had not been paid any salary. They had been living together on the farm since 1961 and in 1973 the respondent forced her out of the home. While they were living and working together the respondent had written a letter to the Commissioner of Lands asking that her name be put on the title.

In Nixon v. Nixon (1969) 3 All ER 1133, Lord Denning M.R. said:

"What is the position of a wife who helps in the business? Up and down the country, a man's wife helps her husband in the business. She serves in the shop. He does the travelling around. If the shop and business belonged to him before they married, no doubt it will remain his after they marry. But she by her work afterwards should get some interest in it. Not perhaps an equal share, but some share. If they acquire the shop and business after they marry - and acquire it by their joint efforts - then it is their joint property, no matter that it is taken in the husband's name. In such a case, when she works in the business afterwards, she becomes virtually a partner in it - so far as the two of them are concerned and she is entitled, *prima facie*, to an equal share in it.

Test it this way: if the wife had gone out to work and had earned wages which she brought into the family pool - out of which the shop and business were bought - she would certainly be entitled to a share. She should be in just as good a position when she serves in the shop and receives no wages, but the profits go into the business. The wife's services are equivalent to a financial contribution. And it has repeatedly been held that when a wife makes a substantial financial contribution, she gets an interest in the asset that is acquired."

In Josephs v. Josephs RSCA No. 13/64 (Unreported) Carey J.A. said

at page 23:

"Her unpaid services demonstrate in my view, cogent evidence of the joint nature of their endeavours, and ought not to be discussed as a trifling contribution. There is also to be added her share of the profits. I would characterize the wife's total contribution as substantial. It is neither fair nor just that her efforts should count for naught and she should be driven out, if the husband had his way, empty handed."

With respect, I wish to adopt these principles to the instant case. I accept the evidence of the applicant and find that her contribution to the establishing of the farm and the building of the matrimonial home was substantial; she was unpaid for her services.

There is no evidence that they reached any expressed agreement as to what the respective share of each spouse should be.

"In such a case the court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse on which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently. It is only if no such inference can be drawn that the court is driven to apply as a rule of law, and not as an inference of fact, the maxim 'equality is equity' and to hold that the beneficial interest belongs to the spouses in equal shares," per Lord Diplock in Gissing v. Gissing (supra) at page 792 (u).

The price of the land was £4,500.00. The respondent was given 25 years to pay for it at two instalments per year. Up to when the parties separated in 1973 the respondent had paid a total of \$3,133.27. Thereafter he paid balance assisted by his son amounting to \$5,752.84. The applicant agreed she made no direct contributions to the payments. Her contribution cannot be quantified.

In Josephs v. Josephs (Supra) Card, J.A. said on page 21.

"In my judgment where parties have laboured jointly in acquiring property and the wife's contribution is largely indirect, for example, in providing unpaid services to a joint business which thus allows the husband to derive profit or to increase his earning capacity, and thereby to make a contribution larger than the wife's, the right and just approach is that the parties share equally."

Accordingly, the court hereby declares that the beneficial interest in the said property belongs to the parties in equal shares.

The court orders that the property be sold and the net proceeds be divided equally between the parties.