



[2017] JMSC Civ 217

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2011 HCV 03238**

<b>BETWEEN</b>	<b>SARAH SQUIRE</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>LEONIE SMITH</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>ROSEMARIE SMITH</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>AND</b>	<b>ANDRE SMITH</b>	<b>3<sup>RD</sup> DEFENDANT</b>

**IN CHAMBERS**

Mr. H.S. Rose, Miss Michelle Thompson and Mr. Dwayne Trowers instructed by H.S. Rose Attorneys at Law for the Claimant.

Mrs. Vivienne Washington for the Defendants.

Heard: 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> July & 20<sup>th</sup> December 2017.

***Equity – Beneficial interest in property – Constructive trust – Proprietary estoppel***

**CALYS WILTSHIRE J. (AG)**

**Background**

- [1] Leonard Smith was the sole owner of the property located at lot 710, North West 32<sup>nd</sup> Way Daytona, Greater Portmore in the parish of St. Catherine, registered at Volume 1289 Folio 165 (hereafter referred to as “the property”).
- [2] The Claimant Sarah Squire was in a relationship with Mr. Smith and resided with him at the property. During this period, Mr. Smith remained married to Alva Smith who resided elsewhere.

- [3] Leonard Smith subsequently died in June 8, 2006 and the Claimant continued residing at the property. A Grant of Administration was obtained in the estate of Leonard Smith on the 6<sup>th</sup> May, 2010 and by way of said grant, the property was transferred to the Defendants who are the children of Leonard Smith.
- [4] The Defendant Andre Smith thereafter served Notice to Quit on Miss Squire and subsequently brought proceedings against her in the Parish Court for recovery of possession of the property. Miss Squire responded with a claim in this court seeking a declaration that she has an interest in the property.
- [5] By an Amended Fixed Date Claim Form, Miss Squire has asked the court for among other things grant the following:
- (1) A declaration that the Claimant is beneficially entitled to a forty (40) percent share in the house erected on all the parcel of land located at Lot 710 Daytona Greater Portmore in the parish of St. Catherine.
  - (2) In the alternative a declaration that by virtue of the doctrine of constructive trust and/or equitable estoppels the Claimant is entitled to an equitable interest in the property.
  - (3) An order that the property be sold and the proceeds of such sale be apportioned between the parties in accordance with their respective interest therein as determined by the court.
  - (4) That the Claimant Sarah Squire be permitted to have the 1<sup>st</sup> option to purchase the said premises situated at Lot 710 North West 32<sup>nd</sup> Way , Daytona, Greater Portmore in the parish of St. Catherine
- [6] In light of the number of parties involved in this matter, I shall to enable easier reading, refer to them by their first names. No disrespect is intended towards them by me doing this. The Claimant's evidence is that from 1997 to 2006 she cohabited with the deceased Leonard Smith who encouraged her to make

additions to the house in which they lived at Lot 710 NorthWest 32 Daytona, Greater Portmore.

- [7]** She claims that she acted on this encouragement as well as representation made by him that she would have a share in the house and that it was his intention to marry her. As a result of this promise she made additions to the property turning it from a quad into a two bedroom house, with living room, dining room and veranda.
- [8]** Sarah's evidence is that the sums she expended on making the addition came from her earnings when she worked in the United States of America. She also produced receipts evidencing purchases of materials used in the construction of the addition to the house, and payments for labour.
- [9]** She relied on the evidence of Rupert Crosby who stated that Leonard Smith gave him a blueprint and employed him to do work on the property. Mr. Crosby stated that he added a veranda, a living room, two bedrooms, a bathroom and an extended the kitchen. He also said that it was Sarah who had paid him "when she travel and come back."
- [10]** Sarah relied on her affidavits sworn to on 29<sup>th</sup> January, 2016 and 27<sup>th</sup> March, 2017 as her examination in chief. She said that it was Leonard who invited her to live with him, and suggested that she should add on a room to the premises. She testified that when she asked him how much he would contribute to the renovation, he said she should go and add on the room and she would benefit from it by having a share in the property. She also said that Leonard told her that he wanted her to be as comfortable as possible as they were building a life together.
- [11]** She earned between US\$300.00 and US\$600.00 from her job at the hotel in the United States of America. She said Leonard was a handyman with Urban Development Corporation and earned J\$6,000.00 bi- weekly. Further that she had to supplement his income during their relationship, as he was always

insolvent as a result of helping his adult children who were always in need. She claims also that she paid the property taxes for the premises from 2002.

- [12] Under cross examination Sarah agreed that Leonard was not single during the time that she lived with him. She stated that they “lived as fiancé”. She indicated that she met Leonard’s children, Leonie, Rosemarie and Andre and that Andre actually lived with them at the property from 2005 to 2010.
- [13] She acknowledged that she wanted to get a place to buy and that she was saving money towards that goal in her account at National Commercial Bank. She admitted that when she met Leonard she didn’t have enough to put towards a house, even before then she had an interest in owning her own home.
- [14] She insisted that in 1998 when she returned from the United States, Leonard met her at the airport, told her he had moved her things to his house and said “Mammy this is where you are going to stay with me”. She said that he told her not to consider going anywhere else, because of the love he had for her and how she treated him with love and respect.
- [15] She admitted that she eventually lost interest in owning her own home after the addition went on in 2002 and Leonard told her “this is going to be me and your house.” She denied counsel’s suggestion that she lived at the house because it was convenient and facilitated her travelling overseas. She reiterated that not only did she live there but she also helped Leonard to pay his mortgage when he ran into arrears as his pay could not meet the payment of \$5,000.00. She however admitted that she was not aware that the mortgage amount was coming from his salary.
- [16] Regarding the construction, she said she employed Rupert Crosby in January 2002 and every time she came back to Jamaica, she would pay him in cash. The money would come from her bank account, her tax returns and funds that she had in hand.

- [17] The sole witness for the Claimant Mr. Rupert Crosby stated that in 2002 he made arrangements with Miss Squire to build an addition to the property. He was paid \$600,000.00 by Miss Squire between 2002 and 2005.
- [18] Under cross examination Mr. Crosby stated that he knew Leonard who had employed him to do some work at the property. He said that he had been given a blueprint by Leonard in 2002 and that's when he met both Leonard and Sarah. Leonard brought Sarah to him and all three of them spoke.
- [19] The defence responded that the property was at all material times the home of the defendant Andre and the deceased Leonard and the matrimonial home of Leonard and Alva Smith. They relied on the evidence of Ralph Burke, Leonie Smith and Andre Smith.
- [20] Mr. Burke said that he was the person engaged by Leonard to do construction work in 2002 and completed same in 2003. He was paid by Leonard in cash on a fortnightly basis, and the total sum that he charged was \$450,000.00. He also said that he would tell Leonard how much and what material was needed and that material would be delivered to the house.
- [21] Under cross examination Mr. Burke admitted that he could not say for certain that it was Mr. Leonard's money that bought the material. I do not find Mr. Burke's evidence to be of any assistance in this matter.
- [22] Leonie, the second defendant testified that she only met Sarah in 2002 when she was visiting her father at the pumping station at the Portmore Mall. She was introduced as his lady friend. She said that later that year she did see her again at the property but cannot say whether she lived there.
- [23] She also said that when she visited the property to see the construction she did see Sarah there along with another lady and a baby. Leonie was not cross examined by Counsel for the Claimant.

- [24]** Three affidavits were accepted as Andre Smith's evidence in chief. He stated that he lived with his father and his father's wife Alva but due to disagreements Alva went away to Canada. He said that the problem between them was caused by the interference of Sarah in the marriage.
- [25]** He refuted the Claimant's evidence that she lived with Leonard from sometime in 1997 and stated that it was in 2003, that Sarah started a visiting relationship with his father at the property. He identified 2004 as the year that Sarah moved in to live with his father along with one of her children, and another female friend and her son.
- [26]** His evidence was that his father formed another visiting relationship with someone else while Sarah was overseas on the Farm Work programme. He said that he believed that Sarah was "kotching" at the house as she did not have anywhere to live.
- [27]** Further, that from his father acquired the property in or around 1996, he resided there with him. He was a teenager attending school in 1997 and his father was his primary caregiver. He said he did not know Sarah in 1997 and his father did not move out of the house and live elsewhere during the time he lived with him.
- [28]** In 2002 his father was expanding the house and as a result he moved out for about 12-18 months and stayed at Alva's house in Hellshire. He returned to his father's house sometime in 2003 but said during the period of the expansion, he visited his father's house from time to time. When he returned home in 2003, his father was living alone and subsequently in the latter part of 2003-2004, he met Sarah who had returned from an overseas programme.
- [29]** Mr. Smith attested to his father being a certified plumber with the Urban Development Corporation and displayed several copies of his salary slips showing his biweekly earnings. He said that his father was maintaining Sarah

- [30] He denied that his father told him that Sarah had acquired any benefit in the property, contributed to the family home or had any interest in it. He maintained that the expansion of his fathers' house was completed long before 2005.
- [31] He said that when his father died, the Claimant moved in a large number of her relatives and children. He thereafter left the house, and moved to rented accommodation. Counsel for the Claimant also chose not to cross examine Andre Smith`.

### **Claimants Submission**

- [32] Miss Thompson submitted that by virtue of the Claimant expending monies on the property she has gained an equitable interest in said property. Further the actions of the deceased Leonard in allowing her to expend monies in expanding the house had estopped the Defendants from denying that Sarah has gained an interest in the said property.
- [33] On the evidence Counsel advanced that the Claimant's account at National Commercial Bank only held her savings, but her payslips indicated her net pay and these sums plus her tax returns enabled her to finance the addition to the house. It was also submitted that she had produced receipts of goods purchased from hardware stores and of services rendered for the expansion of the house. Counsel submitted that the Defence has not given any evidence that Leonard either had the money to finance the addition or did in fact finance same.
- [34] On the doctrine of construction trust Counsel relied on the case of **Leroy McGregor v Verda Francis** [2013] JMSC Civ172 and cited **Grant v. Edwards** [1986] 2 ALL ER 426 at page 431-432 which indicated that;

*"...Where there has been no written declaration or agreement, nor any direct provision by the plaintiff of the part of the purchase price so as to give rise to a resulting trust in her favour. She must establish a common intention between her and the defendant acted on by her that she should have a beneficial interest in the property, she can do that, equity will not allow the Defendant to deny that interest and will construct a trust to give effect to it.*

*In most of these cases the fundamental and invariably most difficult question is to decide whether there was the necessary common intention being something which can only be inferred from the conduct of the parties almost always from the expenditure incurred by them respectively...such expenditure will perform the two fold function of establishing the common intention and showing the claimant acted on it”*

- [35] It was Counsel’s view that the Claimant would never have expended said monies had promises not been made to her. Counsel also referred to **Burns v Burns** [1984] 1ALL ER 244 at 252-253 where it was found that if expenditure was found to have been incurred by the party claiming that they had expended monies, said expenditure will perform the twofold function of establishing a common intention and that the Claimant acted on it.
- [36] Miss Thompson submitted that Andre did not really know what was going on in Leonard’s life. This was based on the evidence of Leonie that did not mention seeing Andre at the house on the occasions that she visited her father and on Andre’s own evidence that he only became aware of his father’s divorce when this claim was filed.
- [37] Counsel also submitted that the Claimant is entitled to an equitable interest by virtue of the doctrine of proprietary estoppels. Reference was made to **Taylor Fashions v Liverpool Victoria Trustees Co. Ltd** and **Old & Campbell Ltd v. Liverpool Victoria Friendly Society** [1982] 1 Q.B.133 .**Yaxley v Gotts and Anor** [1999] EWCA Civ.3006.**Inwards v. Baker** [1965] 2 QB CA and **Jennings v Rice** [2002] EWCA Civ. 159 Counsel argued that had it not been for the representations of the deceased the Claimant would not have expended all the monies she had on the house. It was her expectation to have the house to live in, for her life, or her home as long as she wished for it to remain her home.
- [38] Miss Thompson quoted Aldous LJ at paragraph 36 of **Jennings v Rice** (supra) that;

*“There is a clear line of authority from at least Crabb to the present day which establishes that once the elements of proprietary estoppel are established equity arises. The value of that equity will depend upon all the*

*circumstances including the expectation and the detriment. The task of the court is to do justice. The most essential requirement is that there must be proportionality between the expectation and the detriment.”*

- [39] Counsel advanced that the Defendants were not at the house when the expansion was being done or conceived of. They cannot speak with certainty of any of the conversations between Sarah and Leonard on any details of the construction, or how it was funded. It was submitted that the Defendants were contradictory in their evidence and very little weight should be given to it.
- [40] Counsel submitted that on the principle of **Inwards v Baker** (supra) the Claimant had acquired an equitable interest and the Defendants are estopped from denying same.

### **Defendant’s Submissions**

- [41] Mrs. Washington submitted that the principle of constructive trust, established in cases such as **Grant v Edwards** [1986] 2 All ER427, operates where two or more persons have a common intention, expressed or implied, that one or more is to have a specific share in the property or an uncertain share to be ascertained in due course according to their contributions, so inducing that/ those person(s) to act to his /their detriment in the reasonable belief that he/they is/are thereby acquiring the agreed interest.
- [42] Mrs. Washington pointed to the main principle of the case law being that the detrimental prejudice suffered by one party would make it unconscionable for the other party to deny his/her interest in the property under an expressed or inferred declaration of trust arising from his/her conduct. Counsel referred to Lord Diplock’s analysis of beneficial interest in **Gissing V Gissing** [1970] 2All ER 780 as follows:

*“Any claim to a beneficial interest in land by a person whether a spouse or stranger in whom the legal estate in the land is not vested must be based on the proposition that the person in whom the legal estate is vested, holds it as trustee on trust to give effect to the beneficial interest of the Claimant as cestui que trust.”*

**[43]** She noted that the said principle has been applied in our jurisdiction in cases including **Azan v Azan** [1988] 25 JLR 301 and revisited by the House of Lords in **Stack v Dowden** [2007] UKHL 17 where the court laid down the following:

- (a) There is recognition that where there is sole legal ownership, there is also sole beneficial ownership.
- (b) In sole ownership cases, it is incumbent on the party claiming an interest to show that he/she has any interest at all and what that interest amounts to.
- (c) For the claim of beneficial entitlement to succeed, the claim must show credible evidence that there was a common intention that both should have a beneficial interest in the property either by showing that there was an expressed agreement or by pointing to such words or conduct from which such an agreement may be inferred.
- (d) Compelling evidence is required before it can be inferred that subsequent to the acquisition of the property, the parties intended to change the beneficial interests.
- (e) The Claimant must show that she acted to her detriment on the basis of this common intention.
- (f) The original beneficial ownership could not normally be altered by the carrying out of activities such as decorations, payments for repairs, utilities and council tax as there are concerned with its use and enjoyment, as opposed to its ownership as a capital asset.

**[44]** Counsel submitted that the Claimant's evidence suffered from inconsistencies and she had not demonstrated that she could afford to support her dependents while at the same time contribute to the expansion of the property. Mrs. Washington also submitted that if Sarah did make those improvements to the property, then they were improvements made for her own comfort and enjoyment and could not alter the existing property ownership.

[45] It was also submitted that based on the decision in **Azan v Azan** (supra), even if the deceased did use the words claimed by Sarah, those words could not of themselves constitute a promise unless they were facilitated by the doing of something positive by the deceased. Further that the words “Mommy, this is where you are going to stay with me,” meant nothing and if they were said they were too general to be deemed to constitute an express oral agreement.

[46] Counsel contended that in the instant case, since the property was acquired before the Claimant met the deceased, the question of common intention for her to share in its ownership does not arise. Therefore the court should look to see if any trust would have been created based on any alleged contribution and for the existence of any detrimental reliance on the part of the Claimant.

## **ISSUES OF FACTS**

[47] It is critical to the resolution of this matter that the court determines the following:

- (1) Whether the claimant expended funds in the construction of the addition to the property
- (2) Whether by words or conduct the deceased agreed that the Claimant should have a beneficial interest in the property.
- (3) Whether by words or conduct the deceased encouraged the Claimant to expend funds on construction on the property.

## **ISSUES OF LAW**

[48] The court must also therefore determine:

- (1) Whether the Claimant has an equitable interest in the property by virtue of the doctrine of constructive trust
- (2) Whether the Claimant has an interest in the property by virtue of the doctrine of proprietary estoppels

(3) Whether the Claimant is entitled to a beneficial interest in the property.

## LAW AND ANALYSIS OF EVIDENCE

[49] In the case at bar the title of the property is in the name of the Defendants as beneficiaries under the estate of Leonard Smith. A constructive trust arises where it would be unconscionable for the legal owner of property to claim sole entitlement to the beneficial interest. In **McCalla v. McCalla [2012]** JMCA Civ.31, McIntosh J.A outlined the principle as follows:

*“It is settled law, approved and applied in this jurisdiction in cases such as **Azan V Azan [1985]** 25 JLR 301, that where the legal estate in property is vested in the name of one person (the legal owner) and a beneficial interest in that property is claimed by another (the claimant), the claim can only succeed if the claimant is able to establish a constructive trust by evidence of a common intention that each was to have a beneficial interest in the property and by establishing that, in reliance on that common intention, the claimant acted to his or her detriment. The authorities show that in absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties.”*

[50] McIntosh J.A. also went on to indicate that the principle applies even where the property in dispute is not matrimonial property, and the issues to be determined are not between parties to a marriage.

[51] In the instant case, the Claimant, to prove that the property was subject to a constructive trust must satisfy the court that :

(a) There was the existence of a common intention that she and the deceased were to have a beneficial interest in the property;

(b) That the Claimant in reliance on that common intention acted to her detriment.

[52] Sarah has said that the deceased told her “this is going to be me and your house.” This however in my view is not evidence of any intention on the part of Leonard that Sarah was to have a beneficial interest in the property. Those

words could be construed to mean anything. The Claimant's case therefore suffers from a lack of evidence of any agreement between the parties.

[53] Nourse LJ stated in **Grant v Edwards** (supra) at page 431, that

*"In most of these cases the fundamental and invariably the most difficult question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties, almost always from the expenditure incurred by them respectively. In this regard the courts has to look for expenditure which is referable to the acquisition of the house: see **Burns v Burns [1984]**, ALL ER 244at 252-253, [1984] CH 317 at 328-329 per Fox LJ. If it is found to have been incurred, such expenditure will perform the two fold function of establishing the common intention and showing that the Claimant has acted on it"*

[54] This common intention must however have existed at the time when the property was acquired. None of the expenditure allegedly incurred by Sarah is referable to the acquisition of the house. This house was acquired by Leonard before he knew and met Sarah. I therefore find that there was no agreement and no common intention between Sarah and Leonard that she should have a beneficial interest in the property. The Claimant has failed to establish the existence of a constructive trust.

[55] Can Sarah show that she acted to her detriment in reliance on a promise made to her?

[56] Oliver J. in **Taylor's Fashions** (supra) said at page 144

*"If A under an expectation created or encouraged by B that A shall have a certain interest in land, thereafter, on the faith of such expectation and with the knowledge of B and without objection by him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation."*

[57] I must determine whether it would be dishonest or unconscionable for the Defendants to seek to enforce their right by examining the conduct of the deceased, Leonard.

- [58]** The Claimant had a visiting relationship with Leonard and eventually both of them lived together at the property. Andre's undisputed evidence is that the visiting relationship began in 2002 and Sarah moved in with them, he and his father, in 2004. Andre lived there from 1996, as a teenager at school being cared for by his father. He did not know Sarah then and his father did not move out and leave him to live elsewhere.
- [59]** Undisputed also is that the expansion took place between 2002-2003, Andre moved out then and when he returned, he said Leonard was still living alone. Sarah, according to Andre, moved in during the latter part of 2003-2004.
- [60]** I do not accept Sarah's evidence that she had to help Leonard to pay his mortgage. The pay slips exhibited with the Affidavit of Andre Smith, filed on 28<sup>th</sup> June, 2016, show that the sums due to National Housing Trust were deducted at source and paid directly to them.
- [61]** Sarah has sought to bolster her claim with receipts of her financial contribution to the expansion of the house, utilities and taxes. I will disregard the receipts for payments to Jamaica Public Service and National Water Commission, as those were made subsequent to the death of Leonard Smith. There are receipts evidencing purchases of cement and concrete blocks in early February 2002. These identify the purchaser as Sarah Squire, and the items purchased as construction material.
- [62]** There are receipts which are illegible, made no reference to the purchase or did not identify the property in question. Those I disregarded. The receipts for labour were also largely for the period 2002-2003, with the exception of the one for the tiles and one for Mr. Crosby, which were dated in 2005. I will accept the receipt for the tiling work. However, I have serious misgivings about the one for Mr. Crosby which has a discrepancy, as the figures in words do not match the actual numbers.

- [63]** Sarah in paragraph 16 of her witness statement filed on 29<sup>th</sup> January, 2016, stated that she bought construction items in January 2000 after having discussions with Leonard in 1999 about adding a room onto the quad. I note however that the receipts exhibited are in fact dated from 2002 to 2003.
- [64]** The property taxes which Sarah says that she paid are supported by receipts of payments made in 2010 and 2015 for periods after Leonard had died. I will disregard those receipts.
- [65]** Andre was not cross examined and failure to cross- examine a witness on some material part of his evidence or at all, may be treated as an acceptance of the truth of that part or the whole of his evidence. I must however also examine the gaps in said evidence. Andre could not speak about any relationship in which his father may have been involved in the years 2002-2003 when he was not living at the house. Further he has given no evidence of his own knowledge of how the expansion to his father's house was financed. Leonie's evidence indicated that her father, Leonard considered Sarah his "lady friend" from 2002, and she saw her at the property that same year.
- [66]** From the receipts that I have accepted, a sum of \$416,657.25 was expended by Sarah on the construction done on the property. I accept that she had a visiting relationship with Leonard and they started living together in 2002 when Andre was away from the house. I also accept that based on her payslips, she would have been able to contribute financially to the construction done on the property.
- [67]** Rupert Crosby in his witness statement said at paragraph 2 that he made arrangements with Sarah to build an addition to the quad. Under cross-examination he said "Mr. Smith employ me to do some work at 710 Daytona, Portmore." "It was Miss Sarah who paid me when she travel and come back." "The maximum sum I ever received is \$100,000.00." He said both Sarah and Leonard were living there when he was doing the construction work. He also received a blueprint from Leonard.

- [68] I found Mr. Crosby to be a witness of truth. It is his evidence that fills in some of the gaps. Even though Andre says Sarah moved in around 2003, after construction was complete, she does have receipts for construction material purchased from 2002. While Sarah would like the court to believe that she employed Mr. Crosby, I prefer Mr. Crosby's evidence that Leonard employed him and introduced him to Sarah. But I do accept that he received payments from her.
- [69] I accept that Sarah incurred expenses in renovating and expanding Leonard Smith's property. But did she do so on an understanding that she should share in the beneficial interest of the property? And if there was an understanding did she act upon it to her detriment? The expenses incurred were substantial and capital in nature. There is no doubt that the value of the property was enhanced. Mr Leonard in my view acquiesced in her expenditure and such conduct raised a reasonable expectation on the part of Sarah that she would share in the beneficial interest of the property. I find that her claim succeeds in proprietary estoppel.
- [70] "There are circumstances in which it is not possible to infer any agreement, arrangement or understanding that the property is to be shared beneficially but in which nevertheless, equity has been prepared to hold that the conduct of an owner in allowing a Claimant to expend money or act otherwise to his detriment will be precluded from denying that the Claimant has a proprietary interest in the property". – **Yaxley v Gotts and Anor** (Supra)
- [71] I believe Sarah acted under an expectation encouraged by the conduct of Leonard and on the faith of said expectation, acted to her detriment. Equity requires that effect be given to that expectation. I therefore find that the Claimant is entitled to a percentage share in the property but her entitlement does not exceed 20% of the beneficial interest.

**It is ordered that :**

- (1) Claimant is entitled to a 20% share in the said property at 710 North West 32<sup>nd</sup> Way, Daytona, Greater Portmore in the parish of St. Catherine
- (2) The property be valued by a reputable firm of property valuers, to be agreed on by the parties, within 60 days of this order.
- (3) The property be sold and the proceeds of such sale be apportioned between the parties in accordance with the respective interest determined by the court.
- (4) The Claimant is permitted to have the 1<sup>st</sup> option to purchase the said premises, said option to be exercised within 90 days of the receipt of the valuation report.
- (5) If the option is not so exercised then the property shall be sold on the open market and the proceeds of sale apportioned in accordance with their interests.
- (6) H.S. Rose and Attorneys -at – law shall have carriage of sale.
- (7) The Registrar of the Supreme Court is empowered to sign any document required to effect the sale and transfer of the said property.
- (8) All costs related to the transfer of the property are to be borne equally by the parties .
- (9) Costs awarded to the claimant be taxed if not agreed.
- (10) Issue regarding mesne profits is adjourned to be heard on 12<sup>th</sup> June, 2018 at 12 noon for 1 hour.