

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. F/1989 T.032

BETWEEN	ORANE TINGLE	PETITIONER
A N D	CEYMIC TINGLE	RESPONDENT

IN CHAMBERS

Miss Susan Richardson instructed by Crafton Miller and Company for Wife/
Respondent.

Gordon Steer instructed by Chambers, Bunny and Steer for Husband/Petitioner.

February 4 and 20, 1991

ELLIS, J:

The wife/respondent on a summons under The Married Womens Property
Act claims:

- (1) A declaration that premises 12 Portmore Drive registered at
Volume 1061 Folio 437 are held by the petitioner for himself
and the wife/respondent in equal shares;
- (2) A declaration that wife/respondent is an equitable tenant in
common of the said premises entitled to one-half share in
the premises;
- (3) Declaration that wife/respondent is entitled to a half of the
proceeds of sale of the premises subject to repayment of
mortgage and other outgoings and costs of any such sale;
- (4) Such further and other relief as may be just;
- (5) Costs.

The wife/respondent bases her claim on statements made in affidavits
dated from 28th May, 1990, and ending with one dated 15th November, 1990.

The statements are of the tenor that both parties acquired and
maintained the matrimonial home and a bar business attached thereto by their
joint efforts up to the time of the break down of the marriage. The wife/
respondent's efforts comprised £250 approximately, given by her parents in
1969 towards a deposit on the matrimonial home and time which she spent in the
bar business without being paid.

The husband/petitioner in his affidavits, denies any such joint efforts. He says that he was solely responsible for finding the amount deposited on the premises, and that he on his own, repaid successive mortgages on the premises. He says that the house was fully paid for before the commencement of the bar business. In that circumstance, the wife/respondent had no reason to lodge any money to any bank towards the repayment of any mortgage on the matrimonial home. Finally, on his behalf, Mr. Steer says that three rooms were added to the premises to facilitate the business of the house bar which started in 1982. He says on the evidence, the wife/respondent is only entitled to a 10% share of the value of those rooms.

On a reading of the several affidavits and on hearing both attorneys, I make the following findings:

- (i) The wife/respondent has not indicated any evidence to support her contention of any joint effort with the husband/petitioner to acquire the matrimonial home;
- (ii) The statement in her affidavit that \$250 was given to husband/petitioner by her parents is a mere after thought to provide a peg on which to hang the contention of a joint efforts;
- (iii) The husband/petitioner has shown his sole acquisition of the matrimonial home providing documentary evidence of loans which he obtained from a Credit Union;
- (iv) The acquisition of the premises was completed before the commencement of the bar business which was conducted there;
- (v) The wife/respondent did not work in the bar business towards acquisition of the matrimonial home;
- (vi) Any money which was lodged to the Bank of Nova Scotia went to repay the mortgage obtained by the husband/petitioner for the construction of the facilities for the bar business;
- (vii) There was no intention on the part of the husband/petitioner that the wife/respondent should share in the ownership of the matrimonial home;
- (viii) The wife/respondent worked in the bar business from 1982 to 1987;

(ix) The matrimonial home is severable from the rooms which house the bar business.

Based on the above findings the wife/respondent has not evidenced any entitlement to any of the declaration sought in the Originating Summons dated the 9th July, 1990.

The wife/respondent has proven that she has worked in the house bar since it started in 1982 and until 1987 when the husband/petitioner left the home.

In that case, I am of opinion that she has evinced some evidence of entitlement to share in that business. Taking into consideration all the circumstances, I hold that a one-half share in the bar business, including the three rooms used in relation to the conduct of the business, is an equitable share for the wife/respondent.

The application for the declaration is dismissed with costs to the husband/petitioner to be agreed or taxed.