

NML

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. 1997/E434

**In the Matter of the division of
Matrimonial Property between
RUPERT MORTIMER BENT
and EUNICE RAMLOCHANSINGH
BENT**

AND

**In the Matter of the Married Women's
Property Act**

BETWEEN RUPERT MORTIMER BENT APPLICANT

AND EUNICE RAMLOCHANSINGH BENT RESPONDENT

**Miss Hilary Phillips, Q.C. instructed by Grant, Stewart, Phillips and
Company for Applicant.**

**Mrs. Pamela Benka-Coker, Q.C. and Mrs. D.E. McDonald for
Respondent.**

**HEARD: November 27, 28, 29 and 30, 2000, February 19, 20, 21 and 22
2001, July 9, 10, 2001 and May 17, 2002**

JAMES G.G. J

This matter concerns the division of matrimonial property situated at
25 Stilwell Road, Kingston 8 registered at Volume 487 Folio 41 and
Volume 1168 Folio 90.

By Originating Summons filed on the 9th day of December, 1997 the Applicant seeks a Declaration that the parties are entitled to one-half interest each in the property at 25 Stilwell Road, Kingston 8.

The applicant also seeks consequential relief.

The respondent filed a counterclaim requesting a Declaration that in spite of the fact that the applicant and the Respondent are registered as joint proprietors in respect of 25 Stilwell Road, the applicant has no interest in the beneficial interest in the property and that the respondent is the sole owner of the beneficial interest therein. The respondent is further requesting the Court to declare that the applicant holds the share of the property registered in his name in trust for the respondent and requests that the applicant transfer his share of the property to the respondent.

The respondent is resisting the applicant's claim on the basis that the husband no longer has a beneficial interest in the said property. It is the respondent's contention that although the husband's name is on the title, in or around the year 1990, the husband and the wife agreed that she would transfer her half legal and beneficial interest in property at 1343 Squire Drive, Manotick, Ontario, Canada to him in exchange for his half legal and beneficial interest in 25 Stilwell Road.

The wife in fact transferred her interest in Squire Drive to the husband in October 1991.

It is now for the Court to decide whether or not the husband still has a half share in the legal and beneficial interest in 25 Stilwell Road. In other words, is the wife the sole owner of the beneficial interest in the said property as a consequence of an agreement between the parties?

Both sides agree that there was an agreement with regards to 1343 Squire Drive. The terms of the agreement are highly contested.

A resolution of the dispute before the Court will largely depend on the findings that the Court make with regard to the terms of the agreement. It is necessary that the Court examine the surrounding circumstances and the conduct of the parties in relation to the agreement before the matter can be resolved.

The parties married in 1965, they lived in Jamaica. Sometime in 1967 they decided to emigrate to Canada.

Both parties are very ambitious and hardworking persons. The husband is an engineer, a jazz and classical guitarist, he is also a highly qualified commercial pilot. The wife was employed as a Public Relations Representative in Canada, she also worked for the Jamaica Tourist Board. Later she established her own Consultancy Business in 1981.

The evidence shows that both parties contributed to the financial well being of the marriage and the family.

In his affidavit of 11th June, 1998, the husband admits that he and his wife were the joint legal owners of the dwelling house at Squire Drive, Manotick, Ontario, Canada. He denies that he had any discussions with his wife whereby he had agreed that she should have Stilwell Road and that Squire Drive should be his. It is his contention that his wife did not contribute to the acquisition of the property at Squire Drive and therefore she had no claim on it. He had purchased the land and constructed the house from his own funds as he had originally intended that the family should move to Canada. When it became apparent to him that his wife would not be joining him in Canada, he requested her to sign over her half share in the property to him. There was never any condition for doing so.

The affidavit evidence and the oral evidence presented in this case are quite substantial. I have carefully considered all the evidence adduced along with the authorities cited.

I accept that there was an oral agreement whereby the respondent would transfer her one-half share of the property in Squire Drive in Canada to the applicant and that the property at Stilwell Road would become the respondent's property solely.

Accordingly the Court grants the following declarations:-

1. That in spite of the fact that the plaintiff and the respondent are registered as joint proprietors in fee simple of the land registered at Volume 1285 Folio 666 of the Register Book of Titles and known as 25 Stilwell Road in the parish of St. Andrew, the applicant Rupert Mortimer Bent Jnr. Now has no interest in the beneficial interest in the said property.
2. That the respondent Eunice Ramlochansingh Bent is the sole owner of the beneficial interest in the said property.
3. That the applicant holds the share of the property registered in his name on trust for the respondent.

The claim is dismissed.

Judgment for respondent on counterclaim.

No order as to costs.

Execution of the Judgment stayed for six weeks.