IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FAMILY DIVISION

SUIT NO. FD 1999/B194

IN THE MATTER of the respective proprietary interests of AWEL PETASA BHOOSARINGH and HARRY GEORGE BHOORASINGH in real and personal property situated at 30 Calabar Drive, Calabar Mews, Kingston 20 in the Parish of St. Andrew comprised in Certificate of Title registered at Volume 1130 Folio 258 of the Register Book of Titles.

AND

IN THE MATTER of real property situated at No. 36 Mannings Hill Road Kingston 8 in the Parish of St. Andrew comprised in certificate of title registered at Vol. 1138 Folio 385 of the Register Book of Titles.

AND

IN THE MATTER of real property situated at lot 7E-209 Greater Portmore in the Parish of St. Catherine comprised in Certificate of Title registered at Vol. 1276 Folio 152 of the Register Book of Titles.

AND

IN THE MATTER of the Married Women's Property Act

BETWEEN	AWEL TETASA BHOORASINGH	APPLICANT
AND	HARRY GEORGE BHOORASINGH	RESPONDENT

Mr. Andrew Irving for the Applicant

Mr. Gordon Steer instructed by Chambers Bunny and Steer for the Respondent.

Heard: October 11, 18, 2001

REASONS FOR JUDGMENT

HARRISON J.

On the 18th October I handed down judgment in this matter and promised to put my reasons in writing. I now seek to fulfill that promise.

The Applicant/Petitioner filed an Originating Summons and sought certain declarations and orders for the division of property between herself and her husband under the Married Women's Property Act. Both parties were cross-examined upon their respective affidavits.

The Calabar Mews and Mannings Hill Road properties

These two properties are registered in their joint names. However, joint ownership does not necessarily mean equal rights in the beneficial interest. The presumption of advancement might simply apply or there may be some common intention expressed by the parties or inferred from their conduct.

The evidence in this case revealed that there was some common intention that these properties would be jointly owned by the parties. The question for determination was in what proportion each held their shares? Mr. Steer for the Respondent quite rightly conceded that they would hold their shares as urged by the applicant. The Respondent admitted under cross-examination that when these properties were bought they were intended to be the family homes and that both the Applicant and he would have an interest in them. There was undisputed evidence that:

1. The applicant had negotiated a lower price for both Calabar Mews and Mannings Hill Road premises. Under cross-examination she testified that she had obtained a reduction in the cost of the property since she had known the vendor, Mr. Milton Hewling, who was then Manager of the Jamaica Building Society. With resepect to Calabar Mews she had spoken to Mr. Wong, its owner and had obtained a reduction in the price as well.

2. The Applicant had taken care of household expenses as well as expenses for the children and this had allowed the Respondent in taking care of the mortgage payments.

3. The Applicant had received a sum of money amounting to over $105,000.00 for injuries she had sustained in a motor vehicle accident in the U.S.A. This money was lodged into a joint savings account with the Respondent and money from it was used to do extensions to the house at Calabar Mews. Mortgage payments were also made from this joint savings account.

4. The Applicant had obtained a $1,000,000.00 staff loan at a concessionary rate of interest. This money was used to discharge the mortgage at Calabar Mews and to refurbish the house. The Mannings Hill Road was used as a security for that loan and the Applicant alone has been re-paying the loan by way of salary deductions.

The evidence also revealed that both properties were at one stage or the other used as the matrimonial home. Based upon the foregoing it was reasonable therefore to conclude that both parties held these two properties jointly in equal shares. There is clear authority for this proposition. See **Cobb v Cobb** [1955] 2 All E.R 696 where Denning L.J stated at page 698:

> "...when both husband and wife contribute to the cost and the property is intended to be a continuing provision for them during their joint lives, the court leans towards the view that the property belongs to them both jointly in equal shares...."

See also **Prestwidge v Prestwidge** SCCA 60/99 delivered on the 31st July 2000, where the Court of Appeal, Jamaica held inter alia, that unequal contributions towards meeting the mortgage instalments would not alter the beneficial interest of the parties where the common intention of the parties at the acquisition of the property establishes that it was intended to be a continuing provision for them during their joint lives.

The Greater Portmore property

There is a registered title with respect to this property and the parties are joint owners by virtue of Transfer No. 1026842 registered on the 29th July 1998. The Applicant/Petitioner also sought a declaration that she is beneficially entitled to an equal share in this property. Again it must be emphasized that joint ownership does not necessarily mean equal rights in the beneficial interest.

The Applicant deposed that the negotiations for the purchase of this property was conducted by the Respondent but her name was placed on the title in accordance with the common intention that they should share equally in assets purchased. She also asserted that she had taken care of the children and household expenses which allowed the Respondent to pay the mortgage for this premises.

In his affidavit of the 13th July 2000, the Respondent deposed inter alia, that the mortgage payments were initially made from his salary and thereafter from the proceeds of the rental of the property. No figure was mentioned however with respect to the monthly mortgage payments.

Under cross-examination the Applicant testified that she had not contributed to its acquisition. I took this to mean that she did not make a direct financial contribution. She also said that she knew nothing about its purchase but recalled however, that it was purchased in or about 1993 – 94. Although the Applicant admitted that the Respondent did tell her that it was he and his brother who had bought it she denied that he had told her that he had purchased the brother's share and that he was going to put her name on the title. She denied also that it was the Respondent and his brother who had bought that property in 1998 and in her affidavit of the 2nd August 2000 she deposed at paragraph 10 inter alia:

> "10... The brother of the Respondent, Henry Bhoorasingh's name does not appear on the title. I deny that Henry Bhoorasingh was paid any money for any half share of the said property and say that Henry Bhoorasingh had no reason to have any interest whatsoever in the property, as all negotiations were completed on the instructions of the Respondent. I m not aware of Henry Bhoorasingh being in a position to negotiate any loan with the Caribbean Housing Finance Corporation Limited especially since his earning power at the time was seasonal. Further, he was a casual worker on a farm and his needs were met, at different points in time by the Respondent and he shared accommodation with the Respondent's mother."

The Respondent in his affidavit in response stated inter alia :

> "That with respect to premises at Lot 7E – 209 Greater Portmore, St. Catherine, the Respondent says that this property was bought for $397,000.00 along with his brother Henry Bhoorasingh. Deposit and Closing Costs were financed from the respondent's personal savings, his pension received from Caribbean Housing Finance Corporation, and contribution from his brother, Henry Bhoorasingh and his sister, Merline Bhoorasingh..."

A matter of some concern was whether or not it was the Applicant who had insisted that her name be placed on the title. The Respondent in the affidavit referred to above stated inter alia:

> "7... The Applicant/Petitioner made no contribution whatever to the purchase and/or acquisition and improvement of these premises and her name was only put on the title in 1998 on her insisting that if anything were to happen to me my brother would get 'everything and the children nothing'. As a consequence the Respondent has made arrangements to repay his brother Henry, the sum of $600,000.00 as an agreed price for Henry's half share of the property as of 1998, Henry having agreed to having no further interest in the said property."

During cross-examination, it was suggested to the Applicant that the parties had separated in August 1998 and she agreed. When the Respondent was cross-examined he said she had insisted that her name be placed on the title towards the middle or latter part of 1998. Upon realizing what implications this answer would have, he subsequently altered his story to say that it was before the middle of 1998. I agree with Mr. Irvin's submission that it was most unlikely that the Applicant could have insisted that the Respondent do anything especially to transfer title from his brother to the Applicant at a time when the parties were separated.

Mr. Steer on the other hand, submitted that if the Court found that there was contribution by the parties the next step would be to ascertain the proportion of contribution. He also submitted that if the Applicant had insisted that her name was to be placed on the title then there would have been no intention by the Respondent to give her a share in this property. He argued further that if the Applicant knew nothing about the purchase of this house as she admitted, she could not dispute the fact that the Respondent had purchased his brother's share for Six Hundred Thousand Dollars ($600,000.00).

He referred to and relied upon the case of **Hazell v Hazell** [1972] 1 All E.R 923 and contended that the Court should make an order as it did in **Hazell's** case since the Applicant here had only contributed to household expenses.

Having seen and heard the parties I was of the firm view and I so hold, that the Respondent was not to be believed on his account of how this property was acquired. Although there was no evidence of a direct financial contribution by the wife/applicant there was unchallenged evidence that she had contributed indirectly. She had taken care of the children and household expenses which allowed the Respondent to pay the mortgage for the property. I also took into consideration the background of the parties as it relates to the acquisition of real property; the method in which they saved and contributed to the running of the family homes. I reject outright the allegation that her name was placed on the title due to her insistence.

I also rejected the Respondent's contention that his brother and sister had contributed towards the purchase price. I regarded this contention as a mere "sham". It was my considered view that this seed of contention was sown for the simple reason of having the shares in the property reduced by Six Hundred Thousand Dollars ($600,000.00) if the Respondent had to repay his brother. No evidence had been produced to substantiate this indebtedness and neither was an affidavit from the brother forthcoming.

I was satisfied that the parties were registered on the title as joint owners as it was the continuing intention that they should share in assets purchased. The question therefore for determination was in what proportion each was entitled in terms of ownership? Had the property been the matrimonial home I would have had no hesitation in determining the shares on a fifty percent (50%) basis. In the circumstances, I concluded that the Applicant/wife was entitled to at least a one-quarter (1/4) share of the Greater Portmore property and I so declared.

The Order

It is hereby declared:

1. That the Applicant/Petitioner and Respondent are each entitled to a one-half (½) share in the former matrimonial home situate at 30 Calabar Drive, Calabar Mews, Kingston 20 in the Parish of St. Andrew registered at Volume 1130 Folio 258 of the Register Book of Titles.
2. That the Applicant/Petitioner and Respondent are each entitled to a one-half (1/2) share in all that parcel of land formerly part of Clifton and no. 36 Mannings Hill Road in the

Parish of St. Andrew being the strata lot numbered 19 S.P 21 comprised in Certificate of Title registered at Volume 1138 Folio 385 of the Register Book of Titles.

3. That the Applicant/Petitioner is entitled to twenty-five percent (25%) of the land and building situate at Lot 7E – 209 Greater Portmore in the Parish of St. Catherine comprised in Certificate of Title registered at Volume 1276 Folio 152 of the Register Book of Titles.
4. That either party to be at liberty to purchase the share of the other failing which it shall be sold and the proceeds of sale be divided in the proportions declared in respect of each.
5. That a reputable Valuator be appointed to value the respective properties and that the cost of valuation be bourne equally by each party.
6. That if any of the parties fails or refuses to sign any of the documents relating to the sale of the said properties, the Registrar of the Supreme Court shall be empowered to sign same on behalf of such person.
7. That the Respondent accounts to the Applicant/Petitioner for her 25% of the rental of the premises situate at Lot 7E-209 Greater Portmore in the Parish of St. Catherine as of August 1998.
8. That the Applicant/Petitioner accounts to the Respondent for the rental collected in respect of premises 36 Mannings Hill Road, St. Andrew and to account also for the mortgage payments for the said premises as of August 1998.
9. That each of the parties bears his or her own costs.
10. There shall be liberty to apply.

KARL S. HARRISON

JUDGE

SUPREME COURT

October 25, 2001