



[2013] JMSC Civ. 32

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. HCV 00784 Of 2010

BETWEEN	SYLVIA JUNE BLAIR	CLAIMANT
AND	LLOYD SAMUDA	1ST DEFENDANT
AND	VIVIAN SAMUDA	2 ND DEFENDANT
AND	DAPHNE SAMUDA	3 RD DEFENDANT

Ms Audrey Clarke instructed by Judith Clarke & Co. for Claimant

Mr. Yushaine Morgan and Kleisha Rhoden instructed by Kleshia Rhoden & Co for the Defendants

Third Defendant now deceased – died 17th February 2010 before service of claim

Second Defendant now 86, not present

HEARD IN CHAMBERS

Heard on 8th May 2012 and 15th March, 2013

Claimant and 1st Defendant had a relationship resulting in a child – House built on family land – Claimant seeks declaration as to claimant's interest

CORAM: D.O. MCINTOSH, J

[1] On 18th February, 2010 Sylvia June Blair [Claimant] filed a Fixed Date Claim form against the three Defendants for equitable relief.

[2] She seeks a declaration of entitlement to a share in property at New Hope District, Santa Cruz in the parish of St. Elizabeth as follows:

1. A declaration that she is entitled to an interest equivalent to one half (1/2) share of part of property at New Hope District, Santa Cruz P.O. in the parish of St. Elizabeth, Valuation No. 162-03-020-085 and particularly the portion in the possession of or owned by the 1st Defendant.
2. An order that the said portion of the property be valued by a reputable valuator mutually agreed between the parties failing which a valuator shall be appointed by the Registrar of the Supreme Court.
3. That either party shall be entitled to purchase the one half share of the other within one hundred and twenty (120) days of the valuation of the said property or in the alternative the 1st Defendant if he desires may convey/transfer the property to register the Claimant's interest thereon.
4. An order that the said portion of the property be sold and the net proceeds of sale divided equally between the Claimant and the 1st Defendant in the event that neither party desires or is able to purchase the fifty percent (50%) interest of the other.
5. IN THE ALTERNATIVE a Declaration that the Claimant is entitled to an equitable interest in the said property at part of New Hope District, Santa Cruz P.O. in the parish of St. Elizabeth, Valuation No. 162-03-020-085 by virtue of her contribution towards its development, maintenance and improvement, the nature of the relationship and the course of conduct between herself and the owner/1st Defendant for over thirty (30) years since the late 1970's.
6. An Order that the Claimant is to be compensated by the 1st Defendant to the extent of her equitable interest in the said property or that the said

property be sold on the open market and the Claimant be compensated from the net proceeds of sale thereon.

7. An order that in the event that the portion of land has not been lawfully subdivided in relation to the entire parcel of land at valuation No. 162-03-020=085 the 2nd and 3rd Defendants who are in possession of the said land are obliged to cause the Claimant's interest in the property to be noted by way of conveyance or other lawful deed.

[3] There are a few issues of facts in dispute. The Claimant called no witness. The first Defendant called one witness, the daughter of the Claimant and first Defendant.

[4] This witness [their child] Candi Samuda, corroborated the evidence of the first Defendant in all material particulars.

[5] The land on which the house in this claim was built was/is family land. It belonged to the Samudas. There were other houses on it. There was no gift or sale to Claimant of any part of the land. The land was never subdivided and no order will be made by this court for the 2nd and 3rd Defendants to pass any interest in land to Claimant.

[6] The evidence which this court accepts is that the house was built initially, solely by the first Defendant and members of his family without any involvement financially or otherwise from the Claimant.

[7] The relationship between Claimant and first Defendant ended in 1999 when she left, New Hope to live in Santa Cruz. She left their daughter at New Hope.

[8] From Santa Cruz she left for the United States of America in 2001. There was never a time between the construction of house and the filing of this claim that Claimant ever exercised or demonstrated any rights of ownership over the house at New Hope.

[9] Between 1999 and the filing of the claim there was no intimate relationship between the parties.

[10] It is common ground that Claimant did kept in touch with her daughter by telephone. That Claimant did contribute to the addition of quarters to the original structure for her daughter.

[11] This addition of quarters for their girl child was a gift to their child Candi so that she would not have to be in the same quarters with the other three male occupants of the house.

[12] This court does not find any implied, constructive or resultant trust emanating from Claimant's gift to her daughter. As a consequence the Claimant has failed to prove her case and the court orders –

1. Claimant's case dismissed
2. Costs to the Defendants to be agreed or taxed.