

Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B219/81

BETWEEN URITH BURNETT PLAINTIFF
A N D ACQURIAH BURNETT DEFENDANT

Roy Fairclough and Ravil Golding instructed by Thwaites, Fairclough, Watson and Daly for Plaintiff.

Adolph Edwards for Defendant.

January 30, 31; and March 22, 1984.

JUDGMENT

ELLIS, J: (AG.)

THE CLAIM:

The plaintiff claims by a Statement of Claim a two thirds beneficial interest in $6\frac{1}{4}$ acres of land and the dwelling house thereon at Durham in the parish of Trelawny. She alleges that during the period during which the defendant and herself cohabited as man and wife, she made financial contribution to the acquisition of the land and the construction of the building.

THE EVIDENCE:

The plaintiff in her testimony said that in 1948 she and the defendant became intimate friends. She was then living at Spring Gardens with her father. Her evidence suggests that her father had a sizeable acreage of land cultivated in bananas, coffee, pimento, cocoa, canes, breadfruit and in the nature of the area in Trelawny, the inevitable yam. Her father made sugar from his canes and transported it with other produce in his cart to the market where they were sold. This evidence was given to indicate no doubt, that the father was a man of some material substance and as a consequence his daughter the plaintiff would also be of some materiality.

In contrast to her position, the defendant she said, had only a $\frac{1}{4}$ acre of land which his father gave him. It had on a little cultivation of breadfruits and coffee but the land had no building in 1948.

In 1951 after the parties decided to get married, they started to build on the defendant's land. It was a dwelling house of four bedrooms and a shop. This building was completed in 1952 and they were duly married and moved into the house. According to the plaintiff, the defendant's business at the time of the construction was "not so bright" so she decided to assist by giving him a certain amount of money weekly to help him.

She said she also gave him 15 goats and 300 banks of yams but she cannot say how much was realized, in any case, she was not really interested in the amount since she knew he was building the house.

On their marriage in 1952, they moved into the house. On her marriage, she was given 3 acres of cultivated lands by her father. The crops from this land was reaped and sold and she controlled the family finances and ran the business. The earnings from what was planted and reaped went towards acquiring 6¼ acres of land at Durham and the building of a house on the land. According to the plaintiff's evidence whatever the cultivation yielded went into the building of the house at Durham.

The plaintiff alleged that after they moved into the new house at Durham, the defendant took to drinking and told her that she no longer could handle his business.

The plaintiff was cross-examined by Mr. Edwards for the Defence. She admitted that although she stopped living with the defendant since 1964, and lived quite near to the land, she first claimed an interest in the land in 1978. She took the defendant to court regularly for maintenance but did not then claim any interest in the 6¼ acres of land.

The plaintiff denied that the defendant regularly butchered animals and sold the meat. She admitted in cross-examination that she placed no value on the goats which she gave to the defendant. She also did not check the value of the 300 banks of yam but she knows that the proceeds of the sale of goats and yams went towards purchasing the house at Durham.

During the period which she lived with the defendant she sent interest on the money which was borrowed to purchase the land at Durham to the lawyer in Mandeville and on one occasion she sent £100 as part of the principal.

She told Mr. Edwards that she could not remember if the defendant had land in the Oxford Land Settlement but agreed that the defendant reared a few animals which he sold from time to time. That was the plaintiff's case.

The defendant on his case said that himself and the plaintiff were married in 1952. Prior to that he had built a house and a shop from funds which he saved from butchering and the sale of 2 acres of land at Oxford. The plaintiff gave him no money, which was used in the purchase of land and the erection of any building. He got no yam from the plaintiff neither any goat.

The 6¼ acres of land at Durham were bought from his Uncle before his marriage to the plaintiff. He used his savings and in addition raised a mortgage to purchase the land and to construct the house.

In his testimony, he denied that he was assisted in any way by the plaintiff to acquire land or to erect any house thereon. He said she was in no position to assist him financially and even when she inherited money from her father she did not assist him in any way.

In cross-examination, he said the plaintiff's father had a little land but certainly not in the quantity suggested by the plaintiff. He said he had finished paying for the land at Durham before he and the plaintiff became friends. He denied that the plaintiff helped him in the field and suggested that because plaintiff was of brown complexion she was reluctant to do field work and did none. He said that the plaintiff did not allow him to spend a shilling. He had to give her all the money earned. He admitted that the plaintiff's father had plenty pimento but the plaintiff could not reap it as her father was mean with his produce. He said the house at Durham cost less than £1000 then and he financed its

erection on his own.

From the evidence the plaintiff contends that from before her marriage to the defendant she contributed the erection of a house on the defendant's land. On her marriage to the defendant she assisted him to purchase 6¼ acres of land at Durham and to erect thereon a matrimonial home. She assisted by working with him in the field planting crops which were sold and the money used to pay for land and building. She also gave the defendant goats.

The defendant denies the plaintiff's assistance and from his evidence she had nothing with which to assist him.

On a review of the evidence I am concluded that the plaintiff did make some contribution to the acquisition of the land and house. I accept that there was some objection to the union between the plaintiff and the defendant by the plaintiff's father. That did not cause the plaintiff's father to abandon her as she did live at his house even after bearing two children for the defendant before they were married.

I am also of the opinion that the plaintiff well aware of the objection, to the union, was determined to make a success of the union. She prepared for it by giving the defendant yams and goats to be sold and the proceeds from the sale to be used in building a house; and when they were married she worked with him in the field.

I cannot accept the defendant's story of non-contribution by the plaintiff. I find that on a balance of probability the plaintiff contributed to the acquisition of the property and erection of the house.

The question therefore, is to what extent did she contribute? Mr. Edwards is quite correct in saying that there has been no evidence as to the value of the crops sold with the result that plaintiff has given no evidence of the extent of her contribution.

To my mind that factor allows me to be reminded of the point raised by Mr. Fairclough in his address that the matter is one of equity and to consider the case of Rimmer v. Rimmer [1952] 2 All E.R. 863. The case contains a dictum of Lord Denning to the effect that:

" When the parties, by their joint efforts, save money to buy a house which is intended as a continuing provision for them both the proper presumption is that the beneficial interest belongs to them both jointly. The property may be bought in the name of the husband alone or in the name of the wife alone but nevertheless if it is bought with money saved by their joint efforts and it is impossible to fairly distinguish between the efforts of one and the other, the beneficial interest should be presumed to belong to them both jointly".

I would apply the dictum to this case and I find that the acquisition of the land at Durham and the erection of the house thereon were as a result of the joint efforts of the parties. The fact that the plaintiff made no claim prior to 1981 does not indicate that she is not entitled to a share in the property.

The plaintiff has claimed two thirds of the property at Durham. In all the circumstances, I could not accede to such a claim - it is manifestly unreasonable. In keeping with the decisions in Rimmer v. Rimmer and Hargrave v. Newton [1971] 1 W.L.R. 1611 the plaintiff is beneficially entitled to a half share in the property. Accordingly, the plaintiff will have -

- (i) A declaration that she is beneficially entitled to an interest in 6¼ acres of land with house thereon at Durham in Trelawny now occupied by the defendant;
- (ii) A declaration that the plaintiff's beneficial interest is equal to one half the value of the said land and dwelling house;
- (iii) A declaration that the defendant is a trustee of the plaintiff's interest;
- (iv) An order that the defendant do pay to the plaintiff a sum equal to one half of the value of the afore-said land with dwelling house thereon. Such value to be ascertained by reference to a reputable valuator to be mutually agreed by the parties. Costs of the valuation to be borne equally by the parties; or

- (v) Alternatively, that the said land and dwelling house to be valued as at (iv) above and sold and one half of the proceeds of sale thereof after expenses of such valuation and sale are deducted, be paid over to the plaintiff;
- (vi) The plaintiff is to pay one half of all taxes and rates relative to the said land and house from 1964 to date hereof;
- (vii) The plaintiff is to have the costs of these proceedings to be agreed or taxed.

Stay of execution for six weeks granted at request of defendant's attorney.