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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 814 OF 2002

BETWEEN

JENIFFER CAMPBELL

APPLICANT

A N D

HERBERT AUGUSTUS CAMPBELL

DEFENDANT

Appearances

Miss S. Jarrett instructed by Kingston Legal Aid Clinic for the applicant.

Miss I. Cole instructed by Smith & Cole for the Respondent.

Heard: 29th April and 12th May 2004

Williams, J.

Jeniffer and Herbert Campbell were married on the 21st day of April, 1987 and the union produced one (1) child namely Herbert Augustus Campbell Jnr. born on the 21st day of June 1991. At the start of their relationship they lived in rented premises at Mount Charles in St. Andrew. When they got married Mrs. Campbell's aunt gave her a sow which got them started in the "pig-rearing" business. A shop was operated in rented premises at Nine Miles, Bull Bay with goods to stock it initially provided by the respondent. This business was relocated to Hagley Gap in St. Thomas.

Eventually they bought land at Lot 1 Green Valley in St. Andrew from the Ministry of Housing and the construction of the house commenced. They lived together until the applicant moved out **leaving** the respondent and their son residing there.

These are the bare facts on which both parties are unreservedly agreed. The applicant now seeks a declaration that she is entitled to one half interest in the property situated at Lot 1 Green Valley in the parish of St. Andrew.

The respondent is asking for a decree that the applicant has no interest in the said premises.

The Applicant's version

The version as presented in Mrs. Jeniffer Campbell's affidavit in support of her originating summons and her subsequent affidavit in response to the respondent's affidavit all go to support her contention that she had contributed both financially and physically to the acquiring of the premises at Green Valley road.

As regards the pig rearing business:- her husband had bought a bran and together with the sow from her aunt they began to breed a sty of pigs. The business continued until 1999 and she and her children helped manually in the rearing and raising of each litter.

As regards the grocery shop:- she gave up her job at the coffee factory to work in the shop at her husband's request. Initially she was paid \$3.00 per week to facilitate her "throwing a partner". However once she got her "partner draw" she received no more payment. When the business was relocated she continued to work until when their son was born when the respondent took over. He got his brother to assist and this brother later took over the shop.

In an apparent attempt to supplement the family's income, Mrs. Campbell traveled to Curacao to purchase goods, which she returned to Jamaica to sell. The money to facilitate the initial trip was borrowed from an aunt who was repaid from the proceeds

of the sale of goods. Mrs. Campbell said she traveled to Curacao three (3) times while still operating the shop. Her traveling ceased only when she became pregnant.

Further, she started baking and selling baked products along with snacks, drinks and liquor from the house.

Finally Mrs. Campbell also assisted her husband on the farm where coffee and vegetables were cultivated whenever possible; she also assisted to reap the vegetables which she would sell in the coronation market and only when she was ill would the respondent go to the market himself and sell.

The money earned from the business she claimed, was placed in a bank account and it was largely from this account together with other pooled resources that the land at Lot 1 Green Valley was bought. She exhibited a copy of the agreement for sale dated the 17th of February, 1991 between the Ministry of Housing and the purchasers being both Herbert Campbell and Jeniffer Campbell. The contract price was fifteen thousand dollars (\$15,000) and with attendant costs the final total price was seventeen thousand one hundred and forty five dollars (\$17,145.00).

Mrs. Campbell claimed she assisted manually with the actual construction work, she helped to make blocks, she bought steel, bathroom fixtures and more blocks.

The Respondent's version

Mr. Campbell takes issue firstly with the amount of pigs bought to commence the pig rearing activity – he said he bought two brans and a sow. Further his wife had nothing to do with this activity. His father and brother were the ones who looked after the pigs. The pigs littered once and were then sold.

While in agreement that a shop was operated at Nine Miles, Bull Bay Mr. Campbell asserted they both operated this shop but Mrs. Campbell only helped and was paid a weekly sum for her help.

Once the business was relocated he only operated it but his wife continued to receive a salary for her work. It was his brother who assisted in the business until he gave it over to this brother.

He further gave money from the business to finance his wife's one and only trip Curacao. Her baking and selling baked products only lasted for a two-week period and the drinks and liquor that were sold were from stock for the shop that he stored at home. It was he alone who worked on the farm and then would take the goods to the market and sell himself.

As to the actual purchasing of the property, the funds came largely from an account which he had from before he got married which was in his name alone. The balance was taken from the shop.

It was he alone who bought the steel, the bathroom fixtures and made blocks for the construction of the house. It was only when he hurt his back the applicant bought fifty blocks with money that came from selling produce from the farm.

The Submissions

Miss Jarrett for the applicant supplied the court with written submissions.

The issues identified to be determined were:-

- (1) was the property acquired for the joint benefit of the parties?
- (2) what is the beneficial interest of the parties?

She outlined that the cases illustrate that the court has regard to the following principles in determining ownership:-

- (a) common intention
- (b) contribution
- (c) registration in both names

She relied on the principles to be gleaned in the cases **Murdock v Murdock (1981) 18 JLR 215; Robinson v. Robinson – Suit No. E-284 of 1997; Josephs v Josephs RMCA 13/85; Pettitt v Pettitt (1969) 2 All ER 385; Nixon v Nixon (1969) 3 All ER 1133.**

This last named authority provided a quotation from Lord Denning at page 392 which best summed up the law applicable to the instant case:-

“When husband and wife by their joint efforts acquire property which is intended to be a continuing provision for them both for the future, such as the matrimonial home ...the proper inference is that it belongs to them jointly, no matter that it stands in the name of only one. It is sometimes a question of what is the extent of their respective interests, but if there is no other appropriate division the proper inference is that they hold in equal shares’

Miss Jarrett urged that there was enough evidence from which the Court could ascertain that the parties had a common intention - evidenced in particular by the agreement for sale which was signed by both parties as purchasers.

Further it was submitted that the applicant’s contribution was significant and it was their joint earnings which went into the acquisition of the property. She urged that the principle of equality is equity should be applied and applicant should therefore be entitled to 50% interest in the premises.

In her response, Miss I. Cole indicated she relied solely on the respondents affidavits and the evidence therein. Hers was a factual response she said, as all the evidence from the respondent show that the applicant came to the marriage with nothing and did nothing during the marriage to acquire any interest in the property. She urged the Court to accept his version of the circumstances surrounding the acquisition of the property. Once it was accepted, the finding should be that the applicant has no interest in the property and the respondent should be declared the sole beneficial and legal owner of the property.

The Issues

The Court has to determine whose version of the circumstances surrounding the acquisition of the premises it believes on the balance of probabilities.

The Court is struck by the paucity of documentary evidence provided by the parties. In his affidavit, the respondent refers to a letter from the Ministry of Housing detailing the cost of the property. When asked, Miss Cole indicated that this letter was on her file – no explanation as to why it was not exhibited.

In their affidavits, both parties refer to the role various relatives played in assisting them in finally acquiring the property. It would have been useful if any of these persons had given evidence to assist the court in making a final determination eg. The applicant's aunt who is alleged to have funded the initial Curacao trip on the applicant's version or the respondent's brother who seemed to have assisted him more than his wife.

So once again the Court has to make a finding on the usual "he said/she said" assertion that inevitable contradict each other.

If the respondent is to be believed, the applicant's only contribution was by way of labour in the store and for this she was paid. It was he who did most of the work in the shop, he who worked the farm and he who went to market. He earned all the income for the family.

It is significant to note that there is no indication as to what Mrs. Campbell's remuneration was for her working in the shop.

The applicant portrays a husband and wife who worked together, supported each other in their individual activities and pooled their earnings for the benefit of the family. It was the applicant who exhibited the sale agreement which identifies both parties as the purchaser.

I find the version as presented by the applicant to be preferred and am satisfied that the parties did in fact work together and pooled their resources for the benefit of the family. The property was purchased from their joint savings to be used for matrimonial home.

The Law

The Court in determining the parties interest in the property needs firstly to resolve the question of whether there was a common intention in respect to the property at the time it was acquired.

It is a settled principle of law that where there is no evidence to the contrary, the conveyance of property in the joint names of the parties vests the legal estate in them both and gives rise to the presumption of a joint beneficial interest in the property.

One is always guided by the pronouncement of **Lord Diplock in Pettitt v Pettitt** 1970 AC 777 at 818 when he describes the test to be applied in these terms:-

“In the first place the beneficial ownership of the property in question must depend upon the agreement of the parties determined at the time of the acquisition. If the property in question is land there must be some lease or conveyance which shows how it was acquired..... But the document may be silent as to the beneficial title. The property may be conveyed into the name of one or other or into the names of both parties jointly in which case parol evidence is admissible as to the beneficial ownership that was intended by them at the time of acquisition and if, as very frequently happens as between husband and wife such evidence is not forthcoming the court may be able to draw an inference as to their intentions from their conduct. If there is no such available evidence then what are called presumptions come into play.”

In **Barnes v Barnes SCCA 77/2001** (unreported) Langrin J.A. sums up the principle as follows:

“Where a husband and wife purchase property in their joint names intending that the property should be a continuing provision for them during their joint lives, then even if their contributions are unequal the law lean towards the view that the beneficial interest is held in equal shares”.

In **Josephs v. Josephs RMCA 13/84** (unreported) delivered on October 13, 1985

– Carey J.A. stated:-

“In the absence of express agreement on the part of the spouses the court will preserve or impute that having jointly contributed they intended to share equally. The proportion will be altered only when either share can be precisely ascertained or the contribution is trifling”.

The Decision

On the facts as found, there is unchallenged evidence that the document relative to the purchase of the property was signed by both parties thus evidencing a common intention in the parties to take the conveyance in their joint names. The conduct of the parties thereafter was to continue to pool their resources to construct the house. They

both contributed and thus from these circumstances are entitled to equal shares in the property. The principle equality is equity is to be applied.

It is hereby ordered:-

(1) That the applicant is entitled to one half or 50% share in the property located at lot 1 Green Valley in the parish of Saint Andrew and the respondent is entitled to one half or 50% share.

(2) That the property be valued by a valuator to be agreed between the parties and cost of the said valuation be borne by the parties equally.

In the event the parties fail to agree to a valuator that the Registrar of the Supreme Court be empowered to appoint one.

(3) That each party be at liberty to purchase the share of the other with respondent/husband having the first option to purchase the share of the applicant within four (4) months of the date of the valuation.

Alternatively, the premises be sold on the open market by private treaty or public auction and the net proceed be divided equally between the parties.

(4) That in the event of either or both parties failure or refusal to sign the relevant documents to effect a registerable transfer, the Registrar of the Supreme Court is empowered to sign such documents.

(5) Cost to the Applicant.

(6) There shall be liberty to apply.