

*Sup Ct - Matrimonial Property - whether wife contributed - whether wife had interest - Evidence - Summons dismissed.*

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

FAMILY DIVISION

SUIT NO. D1990/F060

BETWEEN

HORATIO FORSYTHE

PETITIONER/RESPONDENT

AND

ANNIE FORSYTHE

RESPONDENT/APPLICANT

(Summons for Division of Matrimonial Property)

In Chambers.

Heard: 29th June, 1993.

Miss S. Mitchell instructed by Frater, Ennis & Gordon  
for wife/applicant.

Miss C. McFarlane instructed by Ernest Smith & Co. for  
husband/respondent.

July 27th 1993

Harrison J. (Ag.)

(Oral judgment delivered)

1. Reference is made to Summons dated 4th December, 1992 and filed by the wife/applicant. Her affidavit in support is adverted to.

2. Issues in the case:

(a) Whether the wife/applicant has an interest in all that parcel of land part of Tanglewood registered at volume 993 Folio 93 of the Register Book of Titles.

(b) Whether there was a common intention and/or understanding that the parties would jointly acquire a home during the course of the marriage.

Certain particulars noted.

1. The parties were married 8th December, 1985.
2. A husband's petition for dissolution of the marriage was presented on the 11th February, 1992 and a decree nisi granted dissolving the marriage.
3. Copy of Petition exhibited to Affidavit of husband dated 11/2/93.
4. Allegation in Petition that parties separated on or about 15th March 1989.
5. Copy Duplicate Certificate of Title for property known as Tanglewood showing where transfer was effected to the husband solely on November 2, 1989.
6. No response to husband's affidavit dated 11/2/93.

Conduct of case in Chambers

1. There is an Affidavit filed on behalf of the wife/applicant that is dated 23rd November, 1992.
2. An affidavit is filed on behalf of the husband which is dated 11/2/93.
3. Oral evidence was given by the husband under cross examination.

Main ingredients of

Wife's Affidavit evidence

- (a) After the marriage they did not set about buying own home immediately but there was a firm understanding that they would buy a home and it would be jointly owned.
- (b) A decision was taken in 1989 to purchase home in Tanglewood, St. Ann.
- (c) The husband paid deposit and was to pay monthly mortgage instalments.
- (d) She undertook all expenses for child of the marriage and paid grocery and utility bills. This she said was done in order that husband would be in a better position to pay mortgage.
- (e) She operated a boutique and earned between \$10,000.00 to \$12,000.00 monthly.
- (f) Despite the understanding between themselves, the husband conducted transaction and had transfer effected in his own name.

Ingredients of

Husband's Affidavit evidence

- (a) They never discussed question of purchasing home or any property jointly.
- (b) The wife never worked nor paid expenses for child and neither did she pay utility bills.
- (c) He sold home previously owned, in 1984, invested money, and on November 2, 1989 he bought property at Tanglewood.
- (d) During the negotiations for purchase of house the wife was not living with him.
- (e) The parties had frequent quarrels. On 15/3/89 he was seriously injured by his wife and she left the matrimonial home on that date.
- (f) There was an attempt at reconciliation whereby the wife returned to Tanglewood. They could not agree and after two weeks she left, taking the child.

Comments

Separation of the parties

The husband asserts in his affidavit and maintains when cross-examined that they were separated on 15/3/89. No issue had been joined where that date is concerned. The petition for dissolution of marriage exhibited supports this contention.

Acquisition of house at Tanglawood

The wife asserts that they decided to purchase a house in 1989. The husband contends on the other hand that there were no discussions about a joint acquisition and that on 2/11/89 he bought the house from his personal funds and that the transaction took place after they had separated on 15/3/89.

Source of Wife's income

Quite apart from the statement in her Affidavit that she earned between \$10,000.00 - \$12,000.00 monthly from a boutique she operated, no evidence has been adduced to substantiate this allegation. At the end of the day it still remains a mere allegation.

Dressmaking seems to be her source of livelihood however. The husband admitted under cross-examination that she did jobs for a Mrs. Hector who would bring materials to her 2 or 3 times monthly. To his knowledge she was the only person his wife sewed for and no one assisted her in sewing clothes. He had never asked how much money she charged Mrs. Hector. Although there was an arrangement between his wife and Mrs. Hector before they got married he can recall that materials were brought to his wife after marriage, for a period between 6 months and one year.

No evidence was adduced by the wife as to the sums of money paid by her in respect of grocery and utility bills. It is not clear either what was the sum spent by her in undertaking the expenses for the child.

At the end of the day I am far from being satisfied that the wife was really earning the sum claimed and undertaking these expenditures.

The husband on the other hand is a marine pilot earning \$16,000.00 monthly, and upwards. He had the resources to have acquired this home.

His evidence is that he provided \$175,000.00 from his own savings to assist in purchasing the house. The balance of the purchase price, that is \$150,000.00 was obtained on a mortgage to him from Victoria Mutual Building Society in November, 1989. The transfer was registered to him solely on 2/11/89.

Findings and Conclusion

The Court finds the husband/respondent impolite at times during cross-examination. Nevertheless I was convinced and I so hold that he was a truthful witness. The evidence is overwhelmingly in his favour. The wife has failed to prove that she has contributed to the acquisition of this house at Tanglewood and that she has acquired an interest in the property. I also find that although the parties had plans of acquiring a home during the course of the marriage the acquisition of house at Tanglewood was not the result of this intention.

Result

The declaration and order sought in the summons are hereby dismissed.

The husband/respondent shall have the costs of the proceedings with a Certificate for Counsel.