

N/A 12/5

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S MISCELLANEOUS APPEAL NO. 7/96

**BEFORE: THE HON. MR. JUSTICE RATTRAY, P.
 THE HON. MR. JUSTICE PATTERSON, J.A.
 THE HON. MR. JUSTICE BINGHAM, J.A.**

BETWEEN	CYNTHIA FRANCIS	APPELLANT
A N D	QUINCE FRANCIS	RESPONDENT

Miss Sonia Jones instructed by Gresford Jones for the Appellant

Mr. Gordon Steer instructed by Vernon Ricketts for the Respondent

November 1, 1996 and June 16, 1997

RATTRAY P:

On the 1st November 1996 we dismissed the appeal brought by Mrs. Cynthia Francis the applicant/appellant from the determination of Her Honour Mrs. Sinclair-Haynes, the Judge of the Family Court for Kingston and St. Andrew, dismissing her claim to a beneficial interest in premises 9 Carnation Way, Mona, in the parish of St. Andrew registered in the names of the defendant, her husband Mr. Quince Francis, and his brother Mr. Donald Francis. We promised then to give our reasons in writing.

The facts briefly are that in 1975 the parties although not married began living together as man and wife at 4 Orchard Avenue, Hughenden. Mr. Francis was then married to someone else and not yet divorced. Mrs. Francis, then

Miss Myrie was the agent for the Hughenden house, the owner having gone abroad. A child Alecia was born to the union in 1978. The parties got married to each other in July 1983. Mrs. Francis at the time of taking up residence with Mr. Francis was the mother of a son Robert. Mr. Francis by his then existing marriage had three children who do not appear to have lived with them.

In December 1983 premises 9 Carnation Way in Mona was bought, as the title discloses, with the registered owners being Mr. Quince Francis and his brother Donald Francis. The purchase price was \$155,000.00 and a mortgage for \$112,000.00 was obtained from one Neville Chen-See, a friend of Mr. Francis.

Prior to the marriage when the parties lived together the domestic expenses were shared by them both. Mr. Francis had employment assignments abroad and was away from Jamaica from time to time.

Mrs. Francis gave evidence that she "went to visit the house at Carnation Way for the first time when it was being taken over."

There appeared to have been some difficulties between the parties concerning Robert, the son of Mrs. Francis, when they lived together at Hughenden. In 1984 Mrs. Francis said that they had a discussion about going to live at Carnation Way. Because of her concern about incidents having to do with her son:

"I had a discussion with Mr. Francis about my going to live there, ... I asked him under what conditions I was moving to the house because it was bought in his and his brother's names and from the turn of events it appeared to me as if I was not being treated as a wife."

Mr. Francis told her that she was not to worry:

"because the house was as much mine as his and he had already explained the circumstances of his

brother's name being on it. ... I would be living there until I died, it was mine."

Her husband had told her that he had to purchase the house in the name of his brother and himself as he was not qualified for the mortgage and "his brother being a business person would assist him to qualify in terms of showing proof of his assets."

After a misunderstanding between them in 1984 Mr. Francis told her the house was for his children. She told him that she was going to remove back to Hughenden which at the time was still vacant and she began to pack. To cite her evidence:

"I told him I didn't want to be there and his former wife tells his children to put me out. I told him I wouldn't wait for that so I was leaving. He begged me not to go and said the house was ours and I have a right to it and no one could come and put me out. He said it was as much mine as his. I didn't go back to Hughenden."

At Carnation Way, Mona, Mr. Francis paid the mortgage for the house, the water, the light and telephone bills. Mrs. Francis paid the furniture bills and purchased the food. Later on Mr. Francis contributed to the food bill. Mrs. Francis bought utensils, towels, household items and paid the helper. Mr. Francis paid the school fees and bought the school books for their daughter.

Mrs. Francis said that she contributed \$2,400.00 towards repairs and building a storeroom on to the Carnation Way house. \$400.00 of this amount went towards the storeroom.

The sale agreement for Carnation Way was signed in 1983 prior to the marriage. Mrs. Francis or Miss Myrie, as she then was, witnessed the agreement.

Donald Francis had a house at Westbury which was sold and the proceeds went towards the purchase of Carnation Way. Mr. Quince Francis also had a house in Independence City jointly owned with his first wife and Mrs. Francis gave evidence that "Mr. Francis sold his part of the house."

The funds he received went towards the purchase of Carnation Way. Mr. Francis also sold his motor car and the proceeds also went towards the purchase of Carnation Way.

The Carnation Way house was rented to the Government the employer of Mr. Francis for \$450.00 per month and he paid the Government \$30.00 per month during his occupation.

Mr. Francis denied that Mrs. Francis contributed \$2,400.00 for repairs and the building of a storeroom.

The Judge of the Family Court found on the evidence as follows:

1. That Carnation Way was bought by funds provided by Mr. Francis and his brother Donald.
2. That Mr. Francis never told his wife that the house was as much his as hers.
3. That her financial contribution to the family was not of such magnitude as to "liberate his resources to make the mortgage payments."
4. That in keeping with Mr. Francis' evidence only \$100.00 was given by Mrs. Francis towards the building of the storeroom and that this did not give her a proprietary interest as this expenditure was done solely for her own convenience to store her furniture which she had brought from Hughenden.

The law to be applied and which was applied by the Family Court Judge was for the purpose of determining as follows:

1. Was there a common intention between the parties that Mrs. Francis would be entitled to a proprietary interest in the property?
2. Is there acceptable evidence of an agreement in this regard, or failing that was there conduct of the parties which could reasonably cause such a conclusion to be drawn?
3. In any event has Mrs. Francis acted to her detriment consequent upon such common intention?

These are pertinent questions in determining an issue of this nature [see ***Grant v. Edwards and Another*** (1986) 2 All ER 426].

Even if the Family Court Judge had accepted, which she did not, that Mr. Francis had told Mrs. Francis that the house was as much hers as his this would not have assisted any further in vesting a proprietary interest in Mrs. Francis [see ***Azan v. Azan*** - Supreme Court Civil Appeal No. 53 of 1987] in which the words used were "what is mine is yours and what is yours is mine."

None of the services which Mrs. Francis provided could be related directly to the acquisition of the house at Carnation Way. There is no evidence of her acting to her detriment in the belief that she was a part owner and had a beneficial interest in that house. Her whole conduct was consistent with the performance of functions generally carried out by a wife and not specifically referable to a person with a proprietary interest in the house.

The Trial Judge was therefore correct in her analysis of the evidence and her conclusions. For these reasons we dismissed the appeal.