

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. F.D. J. 015 OF 1999

IN CHAMBERS

BETWEEN KEITH IAN JACKSON PETITIONER/RESPONDENT
AND RUBY ANN JACKSON RESPONDENT/APPLICANT

Mr. Ravil Golding and Ms. Stacy Bushay instructed by Lyn-Cook Golding for the
Petitioner/Respondent.

Mrs. Ingrid Lee Clarke-Bennett and Ms. Simone Gentles instructed by Pollard Lee Clarke
and Associates for the Respondent/Applicant.

**Husband and Wife – Ascertaining interest of the parties in former matrimonial
home – Intention at the time of acquisition – Wife not contributing to the cost of
acquisition - Whether agreement made concerning the beneficial interest**

1st December 2009 and 7th January 2010

BROOKS, J.

No. 10 Maeven Avenue in Saint Andrew, was the matrimonial home of Mr. Keith
Ian Jackson and the then Mrs. Ruby Ann Jackson. Mrs. Jackson has since remarried and
for convenience, I shall refer to the parties hereafter as “the husband” and “the wife”.

Although they occupied the property prior to 1988, the husband acquired the title
to the property in that year, in his name only. The wife was a housewife and made no
direct contribution to the cost of acquisition. Their marriage later foundered. When the
husband petitioned for divorce, the wife applied for ancillary relief claiming, among other
things, a declaration that she has a beneficial interest in the property. The husband denies
that she has any such interest. The court’s task is to determine whether their joint search
for a matrimonial home before, and the wife’s efforts after, the husband acquired title,
support her claim that they had agreed that they would own the property equally.

The Acquisition of the Property

There is no dispute concerning the fact that the wife did not contribute directly to the cost of the acquisition. The circumstances of the acquisition were, however, contested. The wife deposed that the property was purchased for \$235,000.00. She says that the couple were, at the time searching for a suitable property to be their family home. The property was, at the time, owned by Arklan Ltd. The subscribing shareholders of the company were the husband and his brother Alan. After Alan emigrated the property was transferred to the husband. The certificate of title shows that this was for a consideration of \$225,000.00. The husband secured mortgage financing in the sum of \$200,000.00.

The husband states that the property was an investment by his family, namely his father, his brother and himself. He says that all were shareholders of Arklan Ltd. at the time of the transfer to him. He, however, provided no supporting documentation for this statement. His statement that his father was a shareholder from the inception of the company was contradicted by the Articles of Association which were exhibited. On the husband's account, the property was not sold to him. According to him, his business needed funds and his father and brother agreed to transfer the title to him in order to secure mortgage financing. On his account, the property was then "worth a lot more than [the transfer price of \$225,000.00] and [that his] brother and [his] father still had an interest in it" after the transfer. He testified that he never gave the wife the impression that she held an interest in the property.

Contribution after the purchase

The wife says that her contribution after the purchase of the property was by way of taking care of her family and the household, purchasing several items of furniture (by way of hire-purchase contracts) and effecting significant improvements to the property.

She says that she financed these ventures from a sewing business which she conducted from home and from a formal business enterprise which she had set up and operated elsewhere. All this she did, she says, because the husband assured her that the property belonged to them both and that her name would eventually be placed on the registered title therefor. She accepted, however, that the husband paid the mortgage instalments and financed the bulk of the family's outgoings.

Assessing the evidence

Cross-examination proved that neither party's evidence was credible in all respects. The husband's account that his father and brother maintained an interest in the property was not credible. This is demonstrated by two particular aspects. Firstly, he contradicted himself on the matter of the proceeds of the mortgage. He deposed in his affidavit sworn to on May 17, 2002 that the mortgage was "to raise capital to establish [his] business". In cross-examination, however, he admitted that the purchase money was sent abroad to his brother to assist his brother in purchasing a house. Secondly, although he said his father and brother were still beneficial owners of the property, he made a will devising it to the wife. The reason he gave in evidence for doing so, was in my view, not candid. When asked in cross examination, "Why did you not leave an interest to your father or your brother", his answer was:

"I can't answer that question, you go to a lawyer and say you want a will so that you don't die intestate. He draws up the will and you sign it...I don't remember if I read it before I signed it."

Since the important decisions of *Pettit v Pettit* [1969] 2 All ER 385 and *Gissing v Gissing* [1970] 2 All ER 780, it has become almost standard for one spouse, who has not contributed directly to the purchase, to assert that the other spouse had agreed that the matrimonial home was beneficially jointly owned. It is just as commonplace for the

other spouse to deny that any such agreement took place. The task of the court becomes even more difficult in determining where truth lies. Lord Reid was probably a harbinger of this development when he said in *Gissing* at page 783 c:

“...a more sophisticated wife who had been told what the law was would probably be able to produce some vague evidence which would enable a sympathetic judge to do justice by finding in her favour.”

So too, with the passage of time, married people can no longer shelter under an umbrella of ignorance of the importance of the formalities of ownership of the matrimonial home. Evidence must be provided to explain the reason for the matrimonial home not having been acquired in the name of both spouses.

In this case, the wife gave a reason why the property was not purchased in both their names. On her account, the husband said that his lawyer told him that he should not put her name on the title at that time and that it could be added afterward.

I find the wife's account, on that matter, incredible. She said that they were house-hunting when the property was bought. They were seeking a place to make a home and raise their children. The search was a joint effort. In my view, her explanation for her name being omitted from the paperwork involved in the transaction cannot stand scrutiny. I find that the husband, funding the entire acquisition as he did, decided to take title in his sole name and had no intention of sharing the beneficial ownership with her.

On the question of whether the wife made contributions to the property on reliance of an assurance by the husband that she was an equal owner with him, I find that the wife's contribution was no more than the contribution of the respondent/wife in *Gissing v Gissing*. In *Gissing* the court found that the respondent/wife, who had provided some furniture and equipment for the house, improved the lawn and “paid for her and her son's clothing and some extras”, had not done enough for the court to “draw an inference

that there was any common intention that [she] should have any beneficial interest in the matrimonial home”.

In the instant case the wife took care of the house, including putting up drapes and wallpaper, she took care of her family, including sewing clothes for the children and she bought some furniture. It is important to note that the wife removed items of furniture after the parties separated and in her claim for ancillary relief she also sought the return of other items of furniture which she says that she had purchased or had received as gifts. Her approach, although perhaps coloured by the breakdown of the marriage, does not suggest a permanent contribution to real property in which she had an interest.

Her credibility, on the level of her contribution, was also undermined. She initially, when trying to show her lifestyle during the marriage, asserted that they “had a domestic helper at all times even when [she] was at home”. In a later affidavit, when attempting to emphasize her contribution to the home, she said “[o]ur household helpers were periodic and only assisted with washing and ironing”.

Similarly, she made it clear in her earlier affidavits, that she could not subsist without a monthly maintenance payment which the husband made to her after their separation. That position is somewhat inconsistent with her later assertions that, during the subsistence of the marriage, she was able to earn enough from her sewing to finance structural improvements to the property.

The wife did produce a few invoices for construction items purchased in her name, particularly ceramic floor tiles and lumber. It is not disputed that ceramic floor tiles were laid and a closet constructed under her supervision. The husband says that he provided the financing. I accept that his evidence is more credible than that of the wife on this point; she had no income of any substance. It was he who paid most of the

outgoings of the home and it was he who paid the cost of the children's education. At best, the wife assisted with purchasing some of the groceries for the family. I find that she has not demonstrated a level of input consistent with a person who was acting on an assurance that she had a beneficial interest in the property. I find that there was no common intention that she should have had such an interest.

The wife also sought to secure an interest in the property on the basis that after their wedding, she stopped working and became a housewife. For the majority of the time for which they were together, that was her vocation, as the husband preferred his wife not to work outside of the home. The wife testified that she earned an income as a dressmaker but she provided no evidence of the level of income. She testified that she earned income from a business that she operated but apart from the fact that no documents were provided to support that claim, the evidence is that that business failed.

In this case where the property is registered in the sole name of the husband, in order to succeed in a claim for an interest therein, the wife must demonstrate that there was a common intention that she was to have an interest in that property. I find that she has not succeeded in that effort.

As was explained in *Button v Button* [1968] 1 All ER 1064, the fact of being a housewife or a husband doing work about the house, does not, by itself, create an interest in the matrimonial home. The following statement by Lord Denning in that case, was approved by their Lordships in *Pettit*:

“The wife does not get a share in the house simply because she cleans the walls or works in the garden or helps her husband with the painting and decorating. Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interests in, the property.”

Mrs. Lee Clarke-Bennett, in support of her submissions for the wife, cited the cases of *Smith v Baker* [1970] 2 All ER 826, *Nembhard v Nembhard* E 186 of 1994 (delivered 14/11/2000) and *Hew v Hew* E 207 of 1998 (delivered 26/1/2001). The facts in those cases are not similar to the factual situation in this case. In *Smith v Baker* and in *Hew v Hew* there was ample evidence of the contribution of the wife to the acquisition of the properties in issue. In *Nembhard v Nembhard* the properties in question had been placed in the joint names of the parties and the presumption of advancement was applied in respect of one of those properties.

A lot of evidence was dedicated to the purchase and the repayment of a mortgage loan secured to purchase an apartment which was purchased in the wife's name and that of one of their children. Whereas there was dispute as to who financed the deposit, it was clear that it was the husband who paid the bulk of the mortgage instalments up to the time when the wife remarried. For much of the time that he made those payments, the husband also paid the wife the sum of \$20,000.00 per month, after she had left the matrimonial home. The significance of the evidence, in my view, is that it would seem that the wife would not have had the wherewithal to finance the structural improvements to the matrimonial home, which she said she did.

The formal basis of the application

It is to be noted that the instant case does not fall under the auspices of the Property (Rights of Spouses) Act, which presumes an equal interest in the matrimonial home. This is because the claim was in existence prior to that Act coming into force. (See section 24) The provisions relevant to the instant case, are set out in section 16 of the Married Women's Property Act, which, as their Lordships have pointed out in *Pettit v Pettit*, do not permit the court to "vary the existing proprietary rights of the parties".

(Strictly speaking, the application should have been made under the purview of that Act and not under the Matrimonial Causes Act. The latter Act does not confer on the court the power to determine the interests of the parties in property. (See *Goodison v Goodison* (1994) 49 WIR 251 at p. 256 d.) As in *Goodison*, however, I shall treat the application as having been filed under the provisions of the Married Women's Property Act.)

Conclusion

The wife has failed to prove that she is entitled to a beneficial interest in the property. She did not contribute to the initial cost of acquiring it. She did not contribute to the repayment of the mortgage loan and she made no contribution over and above that of the average housewife, to enable the court to find that she was acting pursuant to an agreement that she was a beneficial owner of the property.

The evidence is that the husband, at the time of his acquiring title to the property, already had an interest in it, through his shareholding in the company which previously held the title to the property. He alone financed the purchase of, what was essentially, the remaining shareholder's interest. He paid all the mortgage repayment instalments and paid the bulk of the outgoings of the household. The wife's contribution to the improvement of the structure was limited to decorative efforts. Where she did contribute in a more substantive way, it was by way of the supervision of work financed by the husband.

The order of the court therefore is:

1. The Applicant Mrs. Ruby Ann Jackson has no beneficial interest in all that parcel of land, with buildings thereon, known as Number 10 Maeven Avenue, Kingston 10, in the parish of Saint Andrew, being the land comprised in Certificate of Title registered at Volume 457 Folio 14 of the Register Book of Titles.
2. Costs to the Respondent Keith Ian Jackson, to be taxed if not agreed.