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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 32/92

BETWEEN

JOYCE JOBSON

PLAINTIFF

A N D

CLIFTON JOBSON

RESPONDENT

Miss Hilma McNeil for Plaintiff.

Miss Hillary Phillips for Respondent.

HEARD: March 3, 4, 1993 and

28th October, 1994.

ELLIS J.

By an Originating Summons dated 31st January, 1992 under the Married Women's Property Act the Plaintiff/Applicant sought the determination of all questions between herself and the Respondent with respect to the division of all property which was acquired during their marriage. Particularly she sought an Order from the Court as follows:-

- (a) the Defendant CLIFTON JOBSON transfers his interest in the property known as Lot 117, Phoenix Park, Moneague in the parish of Saint Ann registered at Volume 1024 Folio 276 in the Register Book of Titles.
- (b) the Applicant is entitled to one-half the value of all household items removed from the matrimonial home by the Defendant and that the Defendant do pay to the Applicant the sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) representing the value of her one-half interest therein.
- (c) the Applicant is entitled to one-half interest in one 1982 Nissan Patrol Vehicle Registration Number 1213 AR registered in the Defendant's name.
- (d) the Applicant is entitled to one-half interest in one 1987 Lada Phoenix Motor-car Registration Number 8575 AM registered in the name of the Defendant and that the Defendant do pay to the Applicant the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) representing the value of her half interest therein, or
- (e) in the alternative to (c) and (d) the Defendant transfers to the Applicant the said Lada Phoenix Motor-car for her use absolutely.
- (f) the Defendant be restrained from entering the property known as Lot 117, Phoenix Park, Moneague, Saint Ann and removing any item situate on the said property at any time whatsoever.

- (g) the Defendant pays the cost of and incidental to this Application.
- (h) the Applicant do have such further and other relief as may be just.

The Respondent by a Summons dated 13th April, 1992 sought an Order that:-

1. That the Defendant, CLIFTON JOBSON, is entitled to three-quarter interest in the property known as Lot 117, Phoenix Park, Moneague in the parish of Saint Ann being the land registered at Volume 1024 Folio 276 of the Register Book of Titles, and that the Applicant, JOYCE JOBSON, is entitled to one-quarter interest in the aforesaid premises.
2. That either party is entitled to purchase the interest of the other pursuant to the valuation mentioned and referred to at paragraph 8 of the Affidavit of CLIFTON JOBSON sworn to on the 13th day of April, 1992. Failing the agreement of one party to purchase and the other to sell being reached within thirty (30) days on this order, the premises shall be sold by private sale or public auction in either case for a price not below the valuation of the premises. In the event of a private sale or sale by public auction, the net proceeds less the balance outstanding on any mortgage and the costs of sale and costs incidental thereto including legal fees shall be apportioned between the parties as stated in paragraph 1 herein.
3. In the event of the Applicant or the Defendant refusing to sign the transfer or any other documents necessary to give effect to this Order the Registrar of the Supreme Court be empowered to sign the same.
4. That the Defendant is solely entitled to the funds hitherto held in account #5969 at Workers Bank, Linstead in the parish of Saint Catherine.
5. That the Defendant is entitled to sole ownership of the 1987 Lada Fenix motor car bearing registration #8575 AM.
6. That the Defendant is entitled to sole ownership of the 1982 Nissan Patrol Vehicle bearing registration #1213 AR.
7. That the Defendant is entitled to full ownership of all household items mentioned and referred to in paragraph 11 of the Affidavit of the Defendant sworn to on the 9th day of April, 1992 and filed herein, which items were removed by him from the matrimonial home.
8. That the Defendant is entitled to one-half interest in the household items currently remaining in the matrimonial home to the value \$60,000.00 representing the one-half interest thereof.
9. That the Applicant herein do pay the costs of and incidental to this application.
10. Such further or other relief as may be just.

The Applicant by an affidavit dated the 31st day of January, 1992 said that the parties were married on the 7th June, 1975 and lived together at Lot 117 Phoenix Park, Moneague until November 3, 1991. She said the land at Phoenix Park which was purchased before marriage was registered in hers and the Respondent's name as Joint Tenants. In 1975 she contributed \$14,000.00 to the building of a house on the land. That \$14,000.00 came from a loan she obtained from Jamaica Teacher's Association Housing Co-Op Credit Union. The loan was repaid by monthly payments of \$197.00 of which she provided \$114.00 and the Respondent \$83.00.

In 1987 the constructed house was expanded at a cost of \$29,000.00 which was borrowed from The Jamaica National Building Society. The applicant said that during the years of her living with the Respondent she used some of her earnings as a teacher to repay a mortgage on property Lot 183 Whitehouse Housing Scheme in Ewarton. Some of her earnings was also used in the acquisition of household appliances and furniture and in running the household.

She said the Respondent has removed from the matrimonial home several household items and motor vehicles which were acquired as a result of her financial contribution and in that circumstance she is entitled to one-half the value of the items and motor vehicles.

The Applicant was cross-examined on her affidavit and the tenor of the cross-examination was that she had contributed nothing to the purchase of any property. She contended in her answers for contribution.

The Respondent in one of his affidavits dated 13th April, 1992 replied to the applicant's affidavit dated 31st January, 1992 and supported his Originating Summons. He said that he purchased the Lot 117 Phoenix Park, the site of the matrimonial home from his own funds in 1974. In light of that fact, Certificate of Title was issued in his name to the exclusion of the applicant's.

In 1980 the applicant's name was added to the Certificate of Title conveniently to obtain a loan.

He denied that he had any joint account at the Workers Bank with the applicant. He contended that the account had always been in his name from in 1973. He however said that in 1978 when he could not find the time to go to the bank the applicant's name was placed on the account to facilitate her making withdrawals from the account.

She did not, he said, pay an amount of \$114.00 monthly towards the liquidation of any loan. He said he paid \$100.00 per month and the applicant might have repaid an amount of \$3,000.00 over the three year period of the loan.

In 1986 he decided to extend his house so that he could live separately and apart from the applicant as their relationship had "turned sour." He effected the extension from his own resources and from a loan of \$25,000.00 secured from Jamaica National Building Society and it was his intention that the extension should be for his sole benefit.

The property is now valued at \$890,000.00 and he claims three-quarters the value of the property.

The property at Lot 183, Whitehouse Housing Scheme was purchased by him without any contribution from the applicant.

He denied any contribution from the applicant in the purchase of neither the household items nor the motor vehicles and denied the applicant's entitlement to any share in them.

The Defendant/Respondent was cross-examined. His answers to questions in cross-examination repeated his contentions in his affidavit.

From the affidavit and evidence given by the Parties the Issues in this case appear to be:-

- (i) How is the property at 117 Phoenix Park to be apportioned between the parties?
- (ii) Did applicant contribute to deposits in a Joint Bank Account No. 5969 at Linstead Branch of The Worker's Bank?
- (iii) Were the motor vehicles bought with financial contribution from the applicant?
- (iv) Did the applicant contribute financially to the acquisition of the household items of furniture?
- (v) Was the purchase of property at 183 Whitehouse Gardens the subject of a contribution by the applicant?

The Property at Phoenix Park

There is no doubt on the evidence that the land at 117 Phoenix Park had been purchased by the Respondent before the parties were married. There was a conveyance to the Respondent solely. At a later date and after the parties were married the applicant's name was placed on the Certificate of Title solely to facilitate a loan.

It had been admitted by the Respondent, that the applicant contributed to the repayment of that loan which was used to construct a house on the land. In his affidavit

he has conceded that contribution to be one -third the value of the house.

In the circumstances I find that the applicant is entitled to a one-third share in the property at 117 Phoenix Park.

The Bank Account 5969

I am not convinced that the applicant made any contribution to this account. I find that there was no intention to benefit her personally there from although her name was on the account. She therefore has no entitlement in the proceeds of the Bank Account.

The Motor Vehicles

No evidence was produced to found any entitlement of the applicant to any share in the vehicles.

It seems to me that the applicant based her claim to share in the vehicles solely on the fact of her marriage to the Respondent. That is a fallacy.

I hold that the applicant made no contribution towards the purchase of the vehicles and no intention was evidenced that she should acquire any share in them.

The Household Items of Furniture

The applicant listed items of furniture in her affidavit and claimed a half-share in them. She advanced not even an iota of evidence to substantiate that claim or from which her sharing in the furniture could be inferred.

On the other hand the respondent repeated the list of furniture and gave uncontroverted evidence as to his acquisition of them from his own resources and by way of gifts to him personally.

I am constrained therefore to hold that the applicant has no share in the listed items of furniture.

The Property at 183 Whitehouse Gardens

The basis for a claim to share in this property escapes me. This property is owned solely by the Respondent.

It is therefore ordered that on the applicant's Originating Summons:-

- (1) The applicant is entitled to a one-third share in the property at 117 Phoenix Park. To give effect to this order, the property is to be valued by a valuator to be agreed to by the parties and at the costs of the Respondent. Either party is entitled to purchase the share of the other. If there is disagreement to so purchase, the property is to be sold privately or by auction

at the price stated in the valuation report. Where the property is sold privately or by auction a sum to cover the cost of sale and any outstanding mortgage payments is to be deducted from the purchase price and the remainder apportioned one-third to Applicant and two-thirds to the Respondent. Should either party refuse to sign any document relating to a sale of the premises the Registrar of The Supreme Court is empowered to do so.

- (2) The items of household furniture and appliances which have been listed by both Applicant and Respondent are the sole property of the Respondent. Those items which remained at the house at 117 Phoenix Park and under the control of the applicant are to be the applicant's solely.
- (3) The applicant is not entitled to any share in the motor vehicles.
- (4) There is no entitlement in the applicant to a share in the property at 183 Whitehouse Estate, Moneague.
- (5) No order is made on the Respondent's Summons as the Orders made on the Applicant's Summons render any such Order redundant.