

7/2/02

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 379 OF 2000

IN CHAMBERS

IN THE MATTER OF AN APPLICATION
by DIANA RAMONA JOHNSON

A N D

IN THE MATTER OF ESTATE OF
ALEXANDER EZEKIEL JOHNSON,
Deceased.

A N D

IN THE MATTER OF PREMISES
GREENWALL DISTRICT IN THE
PARISH OF SAINT THOMAS

BETWEEN

DIANA RAMONA JOHNSON

APPLICANT

A N D

IVY JOHNSON

DEFENDANT

Lawrence Haynes for Applicant.

Mrs. Antoinette Haughton-Cardenas instructed by Haughton and Associates
for the Defendant.

Heard: September 24, 2002 & October 25, 2002

Daye, J. (Ag.)

This is an originating summons for declaration by the Applicant Diana
Johnson that she is legally and beneficially entitled to sole ownership of

premises situated at Greenwall, Prospect Pen, White Horses in the parish of St. Thomas. In addition, the applicant seeks an order from the Court directing the defendant to vacate possession of the said premises and to deliver up same to her.

The applicant based her claim to the above premises on the statement of arrangements for her care and upbringing by her late father executed on the 12th March, 1981. This statement of arrangements was part of the Petition for Dissolution of Marriage filed by her father to dissolve the marriage between self and the applicant's mother. A Decree Nisi was granted on the 14th May, 1981 and the Decree Absolute on the 3rd July, 1981. The specific portion of the said Petition for Dissolution of Marriage is contained in Suit No. D-004 of 1981 and reads as follows:

“3. That the arrangement for care, control and upbringing of the relevant child (under sixteen years of age) are as follows:

(a)

(b) That the aforesaid premises of Greenwall, Prospect Pen District in the parish of St. Thomas where your petitioner is presently residing is solely bequeath to DIANA RAMONA”.

The petition also contained another provision that the applicant should be fully maintained from the proceeds of rental from another premises belonging to her father.

The applicant's father remarried in June 1982 and died in 1999 leaving his present wife, the defendant, at the premises Greenwall, Prospect Pen District, St. Thomas. The applicant contends that the defendant has been using the said premises in a manner inconsistent with the applicant's rights as owner.

The issue which arises is whether clause 3 (b) of the applicant's father petition was a transfer of his interest in the said premises to his infant daughter, the applicant, in 1981.

When one looks at the scheme of clause 3 which details the arrangements for the care of the Petitioner's children, it appears that he intended that the applicant should have the sole beneficial interest in the premises in question. As stated before he had made separate arrangements for the maintenance of the applicant from another property. In other words it appears that the Petitioner intended to make an **inter vivos** gift to his infant daughter. An **inter vivos** gift is the transfer of any property from one to another gratuitously while the donor is alive and not in expectation of

death (18 Halsbury Laws of England, 3rd edition, paragraph 692). There are three (3) methods by which an **inter vivos** gift can be made:

1. by deed or other instrument in writing;
2. by delivery where the subject of the gift admits delivery
and
3. by declaration of trust, which is the equivalent of a gift
(supra paragraph 692).

The person making the gift must also be competent to do so. Likewise, the donee who is the person receiving the gift must be competent to receive the said gift. In 1981 the applicant at 9 years old would not have been a competent donee to any purported gift from her father. She would therefore face the first impediment to her claim to entitlement to the premises on this ground.

In this application the nature of the property subject to a gift is real property and there are strict formalities which have to be followed in order to effect a transfer of such property. The law is that “a legal estate in land can, in general, be granted by deed only; but when land is held in trust, a grant of beneficial interest therein can be made in writing signed by grantor” (supra. paragraph 721 and see Barnsley Conveyance Law and

Practices, 3rd edition page 3, paragraph 2). If a title to the land is registered, a gift of legal estate must be made by registered transfer.

No registered title was exhibited for the premises in this case. Neither was any reference in any of the affidavits that the premises had a registered title. If this premises was registered the applicant could not claim to receive it by a gift unless she was registered as the transferee. If the premises did not have a registered title then any gift of it would have to be effected by deed.

Counsel for the applicant argued that clause 3 (c) was equivalent to a deed or other instrument in writing that could pass the premises by way of a gift to the applicant. He relied on a dicta of Carey, P. (Ag.) in Sebastian v. Sebastian (1993), 30 J.L.R. 149 at 150 paragraphs D – H to support his view. This case was concerned with the discretion of the court under the Matrimonial Cause Act, 1989 to ensure that Petitions for Dissolution of Marriage make satisfactory arrangements for the care and upbringing of any relevant children of the marriage before a decree absolute is granted. Counsel for the Applicant argued that if the statement of arrangements filed by a petitioner was considered so solemn that the court would refuse to make his decree absolute if it was not made then it is binding and a court should uphold it. It is my view, that the **Sebastian** case is not authority for the

proposition that expression of intention contained in a statement of arrangements supporting a petition for a dissolution of marriage, to give real property to any relevant child operates as a transfer or conveyance of the legal or beneficial interest in that property to that child.

It takes the specific formalities already mentioned to transfer the interest in either unregistered land or registered land from one person to the other by way of **inter vivos** gift. A person may give personal property or real property by a will to anyone. However, the formalities to make a Will must also be satisfied before any such gift is valid. Clause 3 (c) of the applicant's father petition cannot and does not fulfill the condition of making a Will. Therefore, the applicant cannot rely on the promise as passing the property by a Will.

It appears that the applicant's father intended to give her the premises in question. But this gift was not perfected. I accept counsel for the defendant's submission that clause 3 (c) of the Petition amounted to an imperfect gift. I further accept the statement of the law on incomplete gifts that counsel relied on. This was quoted from **20 Halsbury Laws of England, 4th edition, page 30, paragraph 62** and read as follows:

"Where a gift rests merely in promise whether written or verbal, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and

perfect it..... If a gift is to be valid the donor must have done everything which according to the nature of the property, comprised in the gift was necessary to be done by him in order to transfer the property and which it was in his power to do."

Through no fault of the applicant, her late father, the donor failed to transfer the premises to her in 1981 by way of deed or registered transfer. Even had he done so there would still have been a difficulty as she was a minor in 1981. Therefore this court cannot make any declaration that the applicant is entitled solely, legally and beneficially to the premises situated at Greenwall, Prospect Pen, White Horses in the parish of St. Thomas. Neither can this court order the defendant to vacate possession of the said premises and deliver up the same to the applicant.

As there is no argument that the applicant's father made a Will then he would have died intestate. The premises in question would therefore fall for distribution according to the rules of intestacy.

Accordingly the application is refused.

Cost to the Defendant is accordance with Schedule A.