

Sup Ct - Married Women's Property Act - viz action for declaration as to entitlement to property - made at home - with the common intention of the parties - wife's interest - given to her - Maximal Equity in equity applied - Declaration / Order § 6. [Case confirmed - 1989]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 274/87

IN THE MATTER of an application by BERLEINA PHILLIPS
for the settlement of wife's property pursuant to
Section 16 of the Married Women's Act.

BETWEEN

BERLEINA PHILLIPS

APPLICANT

A N D

KENNETH CONSTANTINE PHILLIPS

DEFENDANT

Ola Mae Edwards for the Applicant.

J. Givans instructed by Messrs. Dunn, Cox & Orrett for Defendant.
14th March, 1989.

Pitter, J.

This is an action brought by the Applicant pursuant to Section 16 of the Married Women's Property Act in which she seeks a declaration as to her entitlement to certain properties up to the time of the breakdown of her marriage to the Defendant.

The Applicant and the Defendant were married to each other on the 26th September, 1970, in England.

Prior to the marriage, they lived together from 1955 as Common Law wife and husband, both in Jamaica and in England. There are three children of the family, namely, Neville Roy Phillips, the Defendant's son prior to their union, born the 10th day of March, 1952, Norma Beverley Phillips born the 3rd January, 1955, and Kenneth George Phillips born the 6th day of September, 1956.

The Defendant migrated to England in 1960 and the Applicant joined him there in 1961 where they continued living together as Common Law wife and husband which culminated in their marriage in 1970. From 1960 - 1971 the Applicant worked in two jobs earning a total of £23 per week. Over this period the Applicant paid food and other household bills amounting to £12 per week whilst the Defendant paid rent and utility bills amounting to £8 weekly. They operated separated bank accounts.

In 1965 the Defendant returned to Jamaica on holiday. It is the Applicant's evidence which is not denied by the Defendant, that it was their common intention to purchase lands in Jamaica for the purpose of building their matrimonial home upon their impending marriage and return to Jamaica. She said she gave him £500 in this regard. This too was denied.

The Applicant contends that the Defendant bought 3½ acres of land at Mount Ogle along the Lawrence Tavern main road in the Parish of Saint Andrew, from Counsellor George Mason, now deceased, for the sum of £1500 and that the lands were conveyed in the names of the Defendant only. The Defendant admits coming to Jamaica in 1965 but denies purchasing any property as alleged by the Applicant. He declares that the property mentioned was bought by his late father Zephaniah Phillips for his children but registered the said property in his name. He said that at the time the land was bought he was in England and that the land was put in his name by his father who told him he had not made a will and by putting the land in his name was a means of ensuring that it would come into the ownership and possession of his sisters and himself and his brother.

I consider it rather strange that the Defendant's father thought purchasing the land for his children as the Defendant's says, should go ahead and put it in the name of the Defendant alone who happens to reside in England. I find it equally strange that the Defendant's father who died in 1973 should have left by his will a property in the same area consisting of 32 acres of land bequeathing to the Defendant 15 acres as admitted by him. Of this large average he did not purport convey it into the name of the Defendant so as to ensure his coming into ownership and possession of it. On the totality of the evidence, I find the Applicant and her witnesses to be credible. I find the evidence of the Defendant and his witnesses to be unreliable and accordingly reject the Defence. I find as a fact he purchased 4½ acres of land at Mount Ogle, St. Andrew for the sum of £1200 and that the Applicant contributed £500 towards the purchase ^{price} of the land. The land was conveyed in the name of the Defendant only. I also find as a fact that the land was purchased with the sole intention of building the matrimonial home upon their impending marriage and return to Jamaica. I further find as a fact that the "matrimonial home was subsequently built in 1971 upon the said lands purchased at Mount Ogle for that very purpose. The home consisted of 3 bedrooms, two bathrooms, living, dining, kitchen, verandah and carport. It was built by their joint efforts, the Applicant doing a great of heavy work more than most women would do. She carried sand, mixed mortar, carried blocks, cast block pockets, shovelled mortar, climbed ladders and other manual labour whilst the house was being built.

Her three sisters assisted her in working on the site one day per week for 5 weeks carrying sand to the site. Value of this \$21,688.

The Applicant grouted the ceiling of the house herself and with the assistance of her son Kenneth, she painted it. She continued her usual household chores including cooking for the workers at the site. Having completed the house, the Applicant and the Defendant planted trees and crops around the house. They also acquired animals to the value of \$19,190 by their joint contributions. She assisted in taking care of them whilst Defendant was out working.

Both parties bought furniture of their own purpose amounting to £727. Applicant had bought from her own resources appliances for £200.

The marriage broke down in 1980. The Defendant subsequently removed all furniture, household effects and the animals from the premises. He then rented out the matrimonial home later in 1980 leaving the Applicant with one room. The Defendant returned to England and the Applicant also went back in 1981. On these facts the Applicant seeks a declaration as to her beneficial interest in the properties.

The question to be settled was whether there was a common intention between the parties when they set out to establish their matrimonial home.

In the case of Gissing v Gissing (1970) 2AER 736, Viscount Dilhorne had this to say:-

"... In determining whether or not there was a common intention, regard can of course be add to the conduct of the parties. If the wife provided part of the purchase price of the house either initially or subsequently by paying or sharing in the mortgage payments the inference may well arise that it was the common intention that she should have an interest in the home. To establish this intention there must be some evidence which points to its existence In every case it has to be establish that the circumstance are such that there is a resulting implied or constructive trust in favour of the claimant or a beneficial interest or a share in it."

Applying the above dictum, the payment of the substantial sum of £500 by the Applicant indicates that she was to have a beneficial interest in the property purchased, and not merely to be treated as a loan of that amount to the husband. This too applies to the construction of the home where the applicant contributed her labour and that of her relatives. By so doing the Defendant's contribution to this joint enterprise would be lessened (reduced).

Lord Diplock at p. 790 (Sutra) said:-

"An express agreement between spouses as to their respective beneficial interest in land conveyed in the name of one of them, obviates the need for showing that the conduct of the spouse into whose name the land was conveyed was intended to induce the other spouse to act to his or her detriment on the faith of the promise of a specified beneficial interest in the land and that the other spouse so acted with the intention of acquiring that beneficial interest..... by the parties to a transaction in connection with the acquisition of the land may well have formed a common intention that the beneficial interest in the land shall be vested in them jointly without having used expressed words to communicate their interest to one another...."

"Any claim to a beneficial interest in land by a person whether spouse or stranger in whom the legal estate in the land is not vested must be based on the proposition, that the person in whom the legal estate is vested holds it as trustee on trust to give effects the beneficial interest of the claimant as a cestui que trust"
- Lord Diplock *Gissing v Gissing* p. 789.

The Applicant would therefore be entitled to some interest in the matrimonial home on two bases; (a) her contribution of £500 and (b) her unpaid assistance in the erection of the house itself.

Lord Denning in *Nixon v Nixon* (1969) 3AER 1133, 1136 observed:-

"What is the position of a wife who helps in the business? Up and down the country a man's wife helps her husband in,,, the business, she serves in the shop, he does the travelling around."

"Test it this way, if the wife had gone out to work and had earned wages which she brought into the family pool out of which the shop and the business were bought, she would certainly be entitled to a share. She should be in just as good a position when she serves in the shop and receives no wages, but the profits go into the business. The wife's services are equivalent to a financial contribution and it has repeatedly been held that when a wife makes a substantial financial contribution, she gets an interest in the asset that is acquired."

The wife's services are no less equivalent to a financial contribution and must therefore be brought into account with her initial contribution of £500. Her unpaid services demonstrates in my view cogent evidence of the joint venture of their endeavours and ought not be dismissed as a trifling contribution. I would characterise the wife's total contribution as substantial.

Having found that the Applicant has made a substantial contribution, I now turn to the question of quantum of her interest. Miss Edwards for the Applicant contends that the maxim "Equality is equity" should be applied in respect of the matrimonial home. In this regard reference was made to Gissing v. Gissing (Supra) at page 782.

...." Where the evidence shows substantial contribution whether in moneys or services or both, the maxim "equality is equity" is applicable.

In the case of Nixon v. Nixon (1969 3AER at page 1133 Lord Denning Master of the Rolls had this to say:-

" When husband and wife by their joint efforts acquire property which is intended to be a continuing provision for them both for the future such as the matrimonial home or the furniture in it, the proper inference is that it belongs to them jointly no matter that it stands in the name of one only. It is sometimes a question of what is the extent of their respective interests, but if there is no other appropriate division, the proper inference is that they hold in equal shares."

The locus classicus Josephs v. Josephs RMCA 13/84 the Court of Appeal having considered Pettit v Pettit (1969) 2 AER; Rimmer v Rimmer (1952) 2AER, Gissing v Gissing 1970 - restates the principle in arriving at the brocard "Equality is Equity" - Carey J. A. had this to say:-

".... where parties have behaved jointly ... the right approach is that the parties share equally."

This principle is applicable to the circumstances of this case. Judgment therefore will be infavor of the Applicant.

(a) It is declared that the Applicant is entitled to $\frac{1}{2}$ share in properties "BP-2; BP-4."

I find that the joint contributions by the Applicant and the Defendant extended to furniture and appliances enumerated in schedule "BP-2" amounting to £427 and in "BP - 4" totalling \$19,190. The articles contained in schedule "BP - 1" is her sole property.

The evidence discloses that the parties intended to contribute in equal amounts to their joint undertakings, that of establishing the matrimonial home and among other things their cattle rearing business.

In the circumstances therefore, the maxim "Equality is Equity" will be applicable also.

It is hereby declared that (a) the Applicant is solely entitled to the property specified in schedule "BP-1" and "BP-3" with a valuation of £100.

(b) The Applicant is entitled to half a share in the value of property specified in schedule "BP-2" excluding the contribution towards the car.

(c) The Applicant is entitled to one half share in the property specified in schedule "BP-4".

(d) The Applicant is beneficially entitled to an interest equal to one half of the value of the premises described as the "matrimonial home" situate at Mount Ogle along the Lawrence Tavern main road in the parish of St. Andrew and which is identified by indenture dated 16th April, 1966 and tendered as an exhibit.

(e) That the Registrar of the Supreme Court make enquires as to any encumbrances or interest in respect of the said premises and obtain a valuation of the same, and take such proper and necessary accounts of the rents and profits and outgoings from it since September 1980.

(f) That the defendant, pay to the Applicant one half of the value of the said aforesaid properties.

(g) That the cost of this application to be paid by the Defendant.

(h) Liberty to apply.

Cases referred to

- ① *Gissing v Gissing (1970) 2 AER 786 (Q.B.)*
- ② *Nixon v Nixon (1969) 3 AER 1133 (Q.B.)*
- ③ *Joseph v Joseph [1984] 1 B/84*