

N/11/15

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. 348/95

BETWEEN

ZOE JOYCE PHILLIPS

APPLICANT

A N D

GERALD GEORGE PHILLIPS

RESPONDENT

Mrs. Camille Meikle-Gooden for the Applicant
instructed by Johnson, Meikle and Company

Miss Phillis Dyer for Respondent

Heard: 19th March & 19th July, 1996

In Chambers

Reckord J.

In this summons brought under the Married Woman's Property Act the applicant claims a beneficial interest equal to one half of the value of two properties situate at Turners, Four Paths in the parish of Clarendon. The first property was registered in their joint names at Volume 1119 Folio 908 of the Registrar of Titles. The second property was registered in the name of the respondent alone at Volume 330 Folio 88 of the Registrar of Titles.

Just before the hearing commenced the Attorneys announced that the respondent was not contesting the claim in relation to the first property registered in their joint names and that there was an agreement that each of them was entitled to half share of this property, the matrimonial home. The Court was therefore being asked to determine the issues in respect of the second property.

In her affidavit evidence the applicant deponed that the respondent and herself were married in England on the 4th of June, 1980, and they lived together there until they returned to Jamaica in 1989 and resided at Four Paths, Clarendon.

Prior to their return they discussed the prospect of owning a home in Jamaica and in 1984 the respondent came to Jamaica and purchased the first property from Joint savings and from a loan at the Bank of Nova Scotia.

In 1989 she said they decided to purchase another piece of land.

"This property was purchased with monies derived from our joint savings."

She questioned respondent as to her not receiving any document relative to the purchase for her signature but he advised her not to worry as it was more convenient and there would be no difficulty in adding her name to the title.

From 1992 to 1994 the relationship between the parties deteriorated to the extent that she was suffering from extreme stress and was physically exhausted and she went on a trip to England to recuperate. On her return to Jamaica in October 1994, she discovered that her husband had been having extra marital affairs with a number of young women whom had borne him at least three children. She left the matrimonial home as a result.

Under cross-examination the applicant admitted that respondent owned a house in Brockley before they were married and that it was sold in 1986. She did not know the proceeds of sale and whether it was used to purchase the second property. She could not remember how much was paid for this property. She had come to Jamaica in 1988 to bury her father and this property was offered to her for sale by family friends. That on return to England she mentioned it to respondent and eventually gave him Nine thousand pounds (£9,000.00) to use to purchase this property for the family.

In answer to the Court she admitted that respondent alone had come to Jamaica and completed the transaction with respect to the first property, "including putting my name on the title."

This was the case for the applicant.

In his affidavit evidence the respondent denied that the applicant made any contribution to the purchase of the second property. The entire purchase price was provided by him from the sale of his house in Brockley, London for over Forty-one thousand pounds (£41,000.00). There was never any discussion between them about applicant's name being put on this title as this was solely his property.

When cross-examined the respondent agreed that there was a discussion about constructing a new matrimonial home on the second property. He denied that the second property was purchased from a joint savings account and agreement that it was purchased for both of them.

He denied that he said he would have title amended to include her name.

In answer to the Court the respondent said the first time he knew the applicant was claiming an interest in the second property was when he was served the petition for divorce in 1995.

Under further cross-examination he said "we intended to make the second property a new home. We were going to live there for the benefit of the family. This understanding was not at the time I purchased it." He denied that the applicant gave him Nine thousand pounds (£9,000.00) towards buying the second property.

When re-examined respondent said when the transaction for the second property was finished the applicant was in Jamaica with him. This was end of respondent's case.

Miss Dyer in her submissions asked the Court to look at the purchase of both properties. Although she was abroad when the first property was purchased her name is on the title. Why was it left off the second property? She pointed out that the evidence of applicant giving Nine thousand pounds (£9,000.00) to respondent only arose in cross-examination. It was never mentioned in either of her two affidavits. She referred to the cases Jones v Raymond (1951) 1 A.E.R. 802 and Harris v Harris S.C.C.A 1/81 and submitted that the principle of purchase from joint account does not apply.

Mrs. Gooden on behalf of the applicant submitted that it was the intention of the parties to acquire the second property from their joint benefit. The purchase money was from a common fund.

She referred to Critings Principles of Family Law 4th Edition para. 643. She submitted that there were three issues that the Court had to grapple with. Firstly contribution, secondly - the intention of the parties, thirdly - trust - the test to be applied was one of reasonableness.

Findings

I am not satisfied from the evidence that the purchase price for the second property came from a common savings fund as the plaintiff contends.

The evidence of the respondent that he sold his London house in June 1986 for Forty-one thousand pounds (£41,000.00) to which the applicant had no claim has not been challenged. He claims this is the fund from which he purchased this property. She has offered no evidence as to what he did with the money he got from this sale of his house. I find it difficult to accept her evidence that she gave respondent Nine thousand pounds (£9,000.00) towards the downpayment. She never mentioned this in her affidavit, it only came out under cross-examination. When the respondent was being cross-examined it was suggested to him by counsel for the applicant that applicant had made a downpayment of Fifteen pounds (£15.00) on the property to the owners when she identified it on one of her visits to Jamaica. This again was never included in her affidavit.

In Gissing v Gissing (1978) 2 A.E.R. Lord Diplock said at page 793;

"Where the wife has made no initial contribution to the deposit and legal charges and no direct contribution to the mortgage instalment nor any adjustments to her contribution to other expenses of the household which it can be inferred was referable to the acquisition of the bank, there is in the absence of evidence of an express agreement between the parties, no common intention of the parties that she should have any beneficial interest in a matrimonial home conveyed into the sole name of the husband."

Accordingly, the applicant's claim for a share in the property registered at Volume 330 Folio 88 in the Register Book of Title in the sole name of the respondent fails.

As mentioned in the beginning of this judgment each party agreed to sharing the first property registered at Volume 1119 Folio 908 of the Register Book of Titles - the matrimonial-home in equal shares.

There will be no order as to costs.