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JUDGMENT

SUIT E.74 of 1979

BETWEEN	OSMOND REID	PLAINTIFF
AND	GRESFORD JONES	DEFENDANT

Summons for payment out of Court.
Also HUGH WILLIAMS, JOYCE NELSON
AND GWENDOLYN PETERS BENEFICIARES UNDER
ESTATE OF MIRIAM REID AND CLAIMANTS TO
THE SAID FUND.

HEARING ON 30th July, 1979
AND ON 9th OCTOBER, 1979

MR. B.J. SCOTT Q.C. for Plaintiff.

MR. JAMES KIRLEW, Q.C. and MR. HORACE EDWARDS Q.C. for HUGH WILLIAMS, GWENDOLYN PETERS AND JOYCE NELSON.

MR. S. SHELTON instructed by MYERS, FLETCHER AND GORDON for GRESFORD JONES.

On 9th October 1979, I made an order for payment out of Court of the sum of $27, 304. 17¢ J.A. paid into Court by Mr. Gresford Jones, an Attorney-at-Law, to the Plaintiff or his Attorneys-at-Law. I gave an oral judgement then, but I have now reduced into writing my reasons for so doing.

The Plaintiff Osmond Reid and the deceased Miriam Reid were husband and wife. Prior to her death on the 19th February, 1979 the deceased and the Plaintiff operated a joint savings account at the City Bank of Landerhill, Florida in the United States of America.

Both the Plaintiff and the deceased although Jamaicans by birth, were Naturalised American Citizens but were both resident in Jamaica at the time of the deceased death.

Following his wife's death the Plaintiff by a Power of Attorney authorised Mr. Gresford Jones, an Attorney-at-Law to withdraw the balance standing to the credit of himself and his late wife in the Florida Bank account and to hold the sum on his behalf. When the Plaintiff sought

through Mr. B.J. Scott an Attorney-at-Law to obtain the proceeds obtained by Mr. Jones from him, he Mr. Jones faced with completing claims to the sum in question from the Executors and the Beneficiaries and in particular Mr. Hugh Williams, Joyce Nelson and Gwendolyn Peters, paid the money into Court to await the determination of the issue as to whom is rightly entitled to the money in the said account.

The completing claim by the Executors and the Beneficiaries arose as a result of a clause in the purported, last will and testament of the late Miriam Reid in which she bequeath " all money financial institutions to her two neices , Joyce Nelson and Gwendolyn Peters".

It was contended on behalf of the Executors and Beneficiaries that this clause provided the contary intention necessary to displace the rule of survivorship which ordinarily applies as between signatories to a Joint Account, which contains a survivorship clause.
In addition there were a number of affidavits filed by Mr. Hugh Williams, Gwendolyn Peters and Joyce Nelson all seeking to express the fact that the testator intended certain persons to benefit from the moneys in the two Joint Banks Accounts which she had.

The issue to be determined therefore was whether this money ought to be paid over to the Plaintiff as the husband and survivor under the survivorship clause in the Joint Account or whether it ought to be paid over to the Executors and Personal Representatives of the deceased to be distributed under the terms of the testator 's will or to put the issue in another way, can this clause in the will leaving " all moneys in financial institutions to my neices Gwendolyn Peters and Joyce Nelson" displace or provide a sufficient contrary intention to defeat the rule of survivorship that applies in cases of Joint Accounts where there is a survivorship clause, set out in the mandate given to the Bank by the parties to the Account.

By Summons under an order made by Mr. Justice Malcolm on 19 July,1979, the respondent's beneficiaries were summoned to show why the said amount now paid into Court by Mr. Gresford Jones ought not to be paid over to paid to the Plaintiff, Mr. Osmond Reid. They had to show in the affidavits filed by them that there existed on these affidavits at least a triable issue. This in terms of the existing circumstances of this case meant that they had to produce some documentary proof to show

that what Miriam Reid had by some unequivocal act cancelled the original authority or mandate given to the Bank by which the authority authorising the signatures of her husband or herself were to be accepted, as a sufficient discharge for any balance to the account or any part of such balance the said fund.

The mere fact that the entire proceeds of the Joint Account earnings might have been furnished by the deceased could only fix her husband as Trustee if the mandate to the Bank so indicated, or if the Testator by her own act sought during her lifetime to exercise control over the sums in that account to the exclusion of her husband. There is no evidence of this. Both had the power to withdraw funds from the account. The situation here was unlike that which existed in Reid vs. Grant & Reid reported at Volume 23 part 1 West Indian Reports at page 91 a Judgment of the Court of Appeal of Jamaica delivered by Mr. Justice Watkins. There the Testator one Ferdinand Reid operated a Joint Account in the name of his grand-daughter Greta Reid into which he lodged a sum of £6,000. The grand-daughter was a joint signatory to the account but no withdrawals could be made by her without his accompanying signature. There was, however, a survivorship clause whereby if she survived him she could be beneficially entitled to the balance remaining in the account. The grand-daughter contrary to the Testators wishes left the Island for England and he promptly cancelled the original mandate. It was held that this had the effect of defeating the survivorship clause which applied and was sufficient to supply the contrary intention that the grand-daughter should not take the balance of the fund beneficially.

Mr. Justice Watkins in delivering the Judgment at the bottom of page 94 made the following observations " upon creation of them of the Joint Account the deceased as grantor not only expressly reserved for his exclusive exercise in the future the matter of withdrawals and discharges, but the very continance itself of the Joint Account as such was reserved for termination if either party saw fit by express notice in writing. The inescapable inference was that the deceased at the time of the establishment of the Joint Account indeed, he had settled intentions at all, he was careful enough by his contemparaneous express reservations to preserve for future total freedom of action over the control of the fund".

In this case, there is not even the slightest scintilla of evidence that Miriam Reid ever at anytime during her lifetime sought to control the proceeds in the Joint Account either in Florida or in Jamaica.

As the relationship of husband and wife continued uninterupted with its attendant duties and obligations there seemed to have been nothing to cause the Testator here to exercise any special care as that exercised by the Testator Ferdinand Reid in the case referred to above.
It follows that if she did not in her lifetime supply the contrary intention necessary to displace the application of the survivorship clause then no amount of expressed intention set out in the affidavits filed on behalf of the Respondents can supply such a contrary intention and cannot avail the Respondents. More over such expressions being by their very substance of a testamentary nature would be caught by the rule in Shepherd vs. Cartwright reported at 1954 3 All England Law Reports at page 649, and being subsequent declarations of the Testator they would only be admissible as evidence against the party who did or made them but not in her favour. They could therefore only be interpreted in a manner favourable to and benefitting the Plaintiff and as a declaration against the Testators interest.

Reference must also be made to Re Figgis reported at 1969 1 Chancery Reports at page 124 where on facts even much stronger in favour of the Testator's estate benefitting than in the instant case. Mr. Justice Megarry held that the rule of survivorship in relation to a number of Joint Accounts in the names of the deceased Testator and his wife, who survived him by about 3 months, operated to pass the entire fund in these accounts to the Personal Representatives of the wife even though the funds had been provided entirely by the husband and he had exercised total control over them during his lifetime.

It is therefore to the mandate that one had to look to supply the intention of the parties to the Joint Account. None was exhibited in this matter but the Power of Attorney given to Mr. Jones was sufficient authority to the Bank to pay the entire balance in the account to him. There is therefore, an irresistible inference from the Bank's conduct in the regard that the authority given to the Bank was one authorising payments to either Mr. Reid or his wife.

Here the survivorship clause operated to give the Plaintiff the entire beneficial interest in the fund and this cannot be displaced by any clause in any purported will of the Testator. The Australian case of Russell vs. Scott reported at 55 Commonwealth Law Reports at page 440

puts the matter beyond doubt in this regard. The Judgment of Mr. Justiee Dixon and Mr. Justice Evatt as they then were said in part, " in principle there is no reason why when at Law a choose in action ~~occurs~~ accrues to the survivor of two persons in whom it is jointly vested, equity should fix the survivor with a resulting trust in favour of the Personal Representatives of the value it possesses if the joint chose in action was so vested by the deceased with the purpose of imparting beneficial ownership to the survivor on his death", and further on inthe same Judgement they stated that " Succession post mortem is not the same as testamentary sucession, but what can be accomplished only by will is the voluntary transmission on death of an interest which up to the moment of death belonged absolutely and indefeasibly to the deceased. This is not true of the close in action created by the opening and maintaining the Joint Bank Account".

I respectfully adopt the reasoning as well as the conclusion of these eminent Judges and say further that at the date of the execution of the will, the Testator Miriam Reid had only power to dispose of such sums in financial institutions to her neices as belonged absolutely and indefeasibly to her and did not relate to any Joint Accounts which were opened and maintained during her lifetime along with her husband Osmond Reid.

For these reasons I was of the opinion that there was no triable issue raised on the affidavits of the Respondents or on the legal arguments advanced by either Mr. Kirlew or Mr. Edwards on their behalf and I accordingly ordered that the sum of $27,304;17¢ now paid into Court inthis matter be paid over for with to the Plaintiff Mr. Osmond Reid or his Attorneys, and that the costs of and incidental to the ~~bunging~~ bringing of the proceedings be borne out of the Estate of the late Miriam Reid.

Leave to Appeal granted. Application, for stay of Execution refused.

Bingham J. (AG.)