

in the Supreme Court of Judicature of Jamaica

In Equity

Suit No. E.166 of 1974

In the matter of the Married Women's Property Act

And

In the matter of a dispute between Francella Thompson and Stephen Ezekiel Thompson concerning the ownership of and claim to certain property.

Between	Francella Thompson	Plaintiff
And	Stephen Thompson	Defendant

Ferdinand A. Johnson for plaintiff

Sonia Jones for defendant

June 22, 23; October 6, 1976

Malcolm, J. :

The plaintiff and defendant were married on the 27th December, 1958. The plaintiff is not presently employed, the defendant gives his occupation as a Minister of Religion (House of God).

Prior to marriage, they had been living together as man and wife. There is some uncertainty as to when this relationship started. The plaintiff states from 1952, the defendant from 1955.

Land at Beggar's Bush

Before marriage the plaintiff and defendant had leased half an acre of land at Beggar's Bush, Saint Catherine, from one Jeremiah Taylor. They referred to the document they all signed as a "Lease and Sale" agreement. It was tendered in evidence as Exhibit 1. It recited, inter alia, that at the end of the term the lessor would sell for £70. It appears from the evidence that when the lease expired Mr. Taylor refused to sell and the matter came before the Resident Magistrate's Court for adjudication. The parties hereto allege that it was ordered that the land should be conveyed to them. The defendant in his affidavit of the 19th November, 1974, stated:

" The purchase price of the place including costs was £600 but no title was issued and up to now no title has been issued and the vendor is dead. I paid the full amount of the purchase money and costs as the defendant was not working."

There appears to be an error here. What apparently was intended was "plaintiff."

The plaintiff contends that on the land at Beggar's Bush she

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cultivated vegetables from which she earned an average of \$130 per year. She also claimed that she earned additional sums from the rearing of goats and pigs. The defendant vigorously denies all this.

The parties started out with a one room house on the said land and steadily progressed until, by the plaintiff's account three more houses and by the defendant's account two more houses were erected on the land.

The wife claims that when these houses were being constructed she broke stones and carried water. She also claims that from money given her each week for housekeeping she had put some "towards construction of the houses." Two receipts from one Henry Smith, each for \$100 (£50.) were tendered in evidence by the plaintiff as exhibit 2. The receipts are dated 1968. The plaintiff states that the three houses were built in "1959, 1963 and 1964." I therefore cannot see how these payments can have any connection with these houses. It may well be however that these receipts bear some connection with houses built later at Commodore. The plaintiff places a value of \$27,000 on the property at Beggar's Bush.

#### Land at Commodore

In July of 1965, the plaintiff went to the United States of America. At the time of her leaving the defendant owned no land at Commodore. The defendant states that while she was away he purchased two separate lots at Commodore. The first comprising 1½ squares and the other 2½ squares. I note here that the wife claims no interest in the latter portion of land but only in the 1½ squares.

How was the purchase financed? The wife in her affidavit states:

" This land was bought with the money we earned from the cane cultivation. This money amounted to about \$228."

In her evidence before me she testified as follows:

" Before I left for the United States of America, we had \$228 for the purchase of land at Commodore. I left the money with him that bought the land at Commodore. "

The defendant on the other hand stated:

" I got this money from my earnings. Mrs. Thompson contributed nothing. "

A five apartment house was built on this land. The defendant states that when his wife returned from the United States of America, he borrowed \$100 from her to paint the house. The wife's version is that she contributed

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£100 (\$200) for the enlargement of the house.

Some time in 1966, the defendant bought a second parcel of land comprising  $2\frac{1}{2}$  squares at the said Commodore. On this land there is a one-room house.

The Walks Road Transaction

An agreement for sale (tendered as exhibit 3) was signed on the 30th March, 1961 between Derrick Chang - vendor, and the defendant as purchaser. The purchase price was stated as £450 (\$900) and a deposit of £60 (\$120) was paid. The wife was not a party to this agreement. Again we must ask, where did the money come from? The plaintiff states:

" I gave money towards it but I don't remember how much it was not all his money alone. "

In her affidavit she had stated that both parties paid monthly for this land and that her contribution was from what she earned from the rearing of pigs and goats and from the vegetable cultivation at Beggar's Bush.

The husband in his affidavit stated:

" I bought land at Walks Road from Derrick C. Chang Realty and I made monthly payments out of my pay until the purchase price of £450 was paid off. "

In evidence before me he testified:

" Mrs. Thompson contributed nothing. "

The evidence is that this land was sold by the Bank in 1973 for \$2,500.

Princessfield

In 1969, the defendant bought  $4\frac{1}{2}$  acres of land at Princessfield District. His version is that the land was bought for the House of God Church of which he is a Minister. The defendant states that he paid down £150 for land. The plaintiff states that she contributed a \$100 deposit on this land but admits that the defendant made all other payments.

Why was this land purchased? There is a sharp conflict on this point. The land apparently had a lot of stones on it as also a quarry and the plaintiff's account is that they had arranged to buy this land in order to crush stones and operate the quarry and sell marl. The defendant states that this land was bought for \$800 for the purpose of building a church. To use his words:

" This land belongs to the House of God. The Church gave me the house there. She and I had no discussions re crushing of stones and a quarry. I got no money from my wife for this. "

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The defendant owes the plaintiff \$1,000. He states that he borrowed \$500 when he was completing the house at Beggar's Bush. That she lent him \$100 to paint the house at Commodore and \$400 to buy a van. A document, referred to as "a mortgage" was signed by the defendant. It was tendered in evidence as exhibit 4. It apparently is a mortgage to the plaintiff of the 2½ squares at Commodore. It is dated 29th May, 1971, although in the body of the document an attempt is made to change the date to "seventy-two."

Authorities cited

Pettitt v. Pettitt 1970 C.A. 777

The facts briefly were that a wife bought a house in her name from the proceeds of sale of a previous house belonging to her. Its value was enhanced due to the husband's work on it. The question that fell for determination was the interest if any acquired by the husband. It was held, inter alia, that upon the facts disclosed by the evidence it was not possible to infer any common intention of the parties that the husband by doing work and expending money on materials for the house should acquire any beneficial proprietary interest therein and that accordingly the husband's claim failed.

Ulrich vs. Ulrich 1968 1 A.E.R. p. 67

It was held that money contributed before marriage with a view to setting up the matrimonial home were in the same position as moneys contributed after marriage, and accordingly, after the marriage took place, the husband and wife were entitled in equity to the house in equal shares as tenants in common.

Rimmer v. Rimmer 1952 2 A.E.R. p. 863 was also cited.

The instant case is a good illustration of the difficulties which face a Court in trying to do justice between a husband and wife as regards property when their marriage has come to grief. In all cases of this kind the result must always depend on the particular facts of the particular case.

The "Pettitt" case must be distinguished from the instant case. In that case the house belonged solely to the wife. There was never, as in the case here, any dispute as to where the money came from.

Re: Beggar's Bush

In Rimmer v. Rimmer Lord Justice Denning, as he then was, said:

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" It seems to me that when the parties, by their joint efforts, save money to buy a house which is intended as a continuing provision for them both the proper presumption is that the beneficial interest belongs to them both jointly. The property may be bought in the name of the husband alone or in the name of the wife alone, but nevertheless if it is bought with money saved by their joint efforts and it is impossible fairly to distinguish between the efforts of one and the other, the beneficial interest should be presumed to belong to them both jointly. "

I venture to apply that reasoning to this case.

I find that the plaintiff cultivated vegetables, reared pigs and also contributed by labour to the building of the houses there. I therefore answer the question posed as regards Beggar's Bush as follows:

Plaintiff half, defendant half of beneficial interest.

Re 1½ Squares at Commodore

Where did the defendant get the money to acquire this lot of land? I accept the plaintiff's version on this aspect of the case. I find that she contributed to the purchase of this lot of land.

What of their respective shares?

The House of Lords in Gissing v. Gissing 1970 2 A.E.R. p. 780

held:

" There is no distinction to be drawn in law between the position where a contributing spouse makes direct contributions towards the purchase of the matrimonial home and where the contributing spouse makes **indirect contributions**, although in the latter instance the relevant share in the beneficial interest is likely to be less easy to evaluate; difficulty in evaluating the relevant share does not in itself justify the application of the maxim 'equality is equity' where the fair estimate of the intended share may be some **fraction** other than one-half. "

I view the **situation** here in a somewhat different light from "Beggar's Bush." I answer the question posed as regards land at Commodore as follows:

Defendant two-thirds, plaintiff one-third beneficial interest.

Re: Property at Princessfield

I have already outlined the history surrounding the purchase of these lands. I accept the defendant's version that this land was purchased for the purpose of building a church for the "House of God" of which he is a Minister. I find that that property belongs to the church. I do believe the plaintiff, however, that the defendant got \$100 from her towards the purchase of these lands. I do not believe that there was any

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arrangement express or implied that she should have a beneficial interest in these lands - the \$100 should be repaid to her. My findings do not warrant an order for the sale of these premises.

Walks Road

This land was sold for a price stated in the plaintiff's affidavit as \$2,500. In the light of all the circumstances surrounding this transaction I order that a sum of \$800 be paid by the defendant to the plaintiff.

Conclusion

Under power conferred by sec. 16 of the Act I order a sale of:

1. Beggar's Bush
2. 1½ Squares at Commodore.

Proceeds to be divided in the shares I have above determined.

I do not accept as satisfactory the valuations given in the respective affidavits. I order that the parties secure the services of a competent valuator for the purpose of valuing the two properties. If the parties cannot agree, the question should be referred to the Registrar of the Supreme Court.

The cost of perfecting Title to the lands should be borne by the parties equally.

It is further ordered that the husband defendant pay the costs of this summons.