

*Judgment Book.*

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 157 OF 1986

BETWEEN LORNA MARIA ULETT PLAINTIFF

A N D MOSES DUNSTAN ULETT DEFENDANT

Mrs. Jennifer Kelly for Plaintiff.

Mr. Alvin C. Mundell for Defendant.

HEARD: July 21, 22, 27 & October 6, 1988.

RECKORD, J. (Ag.)

This is an action under Section 16 of the married Women's Property Act.

In 1964, while the defendant was married to someone else, the plaintiff and the defendant began an intimate relationship and started to live together. The plaintiff bore him three children.

In 1972, the defendant purchased the house they were then living in at 4 Doyle Close and later registered it in the name of the plaintiff's then maiden name. The plaintiff never contributed to the purchase price but signed the mortgage documents to secure the balance. It was the plaintiff's evidence, which was denied by the defendant, that she paid four of the mortgage instalments.

In 1976, the defendant's marriage ended in divorce and in 1978, he married the plaintiff.

In 1980, the parties purchased the property 12 Farrington Drive., the subject matter of this dispute. A deposit of \$7,000.00 was paid by the defendant. A part of the purchase price was secured by a mortgage of \$45,000.00 at Victoria Mutual Building Society. Both parties signed the agreement for sale and they both signed the mortgage agreement. The property was transferred into the names of the plaintiff and defendant as joint tenants. Money for the deposit on this property was drawn from an account which the defendant had at Royal Bank. The plaintiff made no direct contribution to the purchase price, but claims that \$20,000.00 from

the sale of the Doyle Close house which was an outright gift to her, was used by the defendant as a deposit on Farringdon Drive.

In relation to Doyle Close the defendant said he had registered it in her, the plaintiff's name, in order to ensure the provision for his children with the plaintiff in case his then wife made demands on him for money. He was trying to avoid a claim by his wife.

In respect of Farringdon Drive, defendant admitted telling the plaintiff that it was put in both names "should anything happen to me, the children and herself would be taken care of".

Mrs. Kelly for the plaintiff based her submissions on  
(i) Contributions made to the purchase price by the plaintiff and  
(ii) Registration as joint tenants i.e. the presumption of advancement.

Mr. Mundell for the defendant submitted that the plaintiff made no contribution to the purchase of Doyle Close and therefore held it in trust for him. In relation to Farringdon Drive, again the plaintiff made no contribution to the purchase price; it was registered in both names to protect the plaintiff and the children in case anything happened to him. This, he said, rebutted the presumption of advancement and that the beneficial interest belonged solely to the defendant.

The crucial principle in all these cases is what was the intention of the parties at the time of the acquisition of the property, the subject matter of the dispute. Nothing was expressed at the time when Doyle Close was registered in the plaintiff's name only. Was this an outright gift to the plaintiff as she claims or did she hold it as a resulting trust for the defendant as he claims.

In *Pettit v. Pettit* (1970) AC 777 at p. 815, Lord Upjohn said:

"So that in the absence of all evidence, if a husband puts property into his wife's name, he intends it to be a gift to her, but if he puts it into joint names then (in the absence of all other evidence) the presumption is the same as a joint beneficial tenancy."

In acquiring Farrington Drive it was admitted on both sides that both parties negotiated for the purchase, both signed the contract for sale and both signed the mortgage agreement. This property was transferred and registered in their joint names.

In Harris v. Harris (Supra) Carey J.A. said at page 5:

" ... since the property was acquired in their joint names it becomes necessary to consider whether the presumption of advancement can be applied in the circumstances of the present case. Where a husband purchases property in the names of himself and his wife it is trite law that a gift to her is presumed in the absence of evidence to the contrary."

The defendant contends that this presumption is rebutted by words "in case anything happens to me." These words, neither in their ordinary meaning nor in the context in which they were used can, in my judgment, be regarded as having this desired effect.

As it is clear from the conduct of the parties that they intended Farrington Drive to be the family home, I do not accept that the presumption is rebutted by these words..

In Burns v. Burns (supra) May L.J. said at page 264

"In the light of all these cases I think that the approach which the courts should follow, be the couples be married or unmarried, is now clear. What is difficult however, is to apply it to the facts and circumstances of any given case. When the family house is taken in the joint names, then unless the facts are very unusual, I think that both the man and the woman are entitled to a share in the beneficial interest."

I do not find the facts of this case to be very unusual and find as follows:-

- (1) That the defendant made a gift to the plaintiff of Doyle Close; their subsequent marriage confirms their initial intention.
- (2) That Farrington Drive was intended to be a family home for the parties.
- (3) That \$20,000.00 from the proceeds of sale of Doyle Close was used towards the purchase of Farrington Drive; the plaintiff being then beneficially entitled to a share in Doyle Close.

The parties in the case were not married to each other at the time of acquiring this property. Should different principles apply?

May L.J. in Burns v. Burns (1984) 1 AER 244 at p. 256

(para 6) said:

"But it is quite clear that the House of Lords decided that S. 17 is merely a procedural section giving the courts no over-riding general discretion in such circumstances and that the principles to be applied are in general the same whether the couple have been married or not."

See also Griffiths L. J in Bernard vs. Josephs (1982) 3 AER at 169

"The judge must look carefully at the nature of the relationship, and only if satisfied that it was intended to involve the same degree of commitment as marriage will it be legitimate to regard them as no different from a married couple."

These parties had been living together for ten years. She had borne him three children. The inescapable inference to be drawn is that he was providing some security for her. It is significant that she signed the mortgage agreement to secure the balance of the purchase price. The plaintiff, no doubt undertook this onerous liability in the belief that she had an interest in the property. This may well be evidence of the intention of the parties then.

Carey J.A. said in Harris v. Harris (SCCA. No 1/81)

"It would be most unlikely that she would have undertaken the onerous responsibility of a mortgagor in respect of property to which she appreciated she was to have no interest."

The facts in that case were that the husband claimed that although the matrimonial home was registered in their joint names and his wife had signed the mortgage agreement, she was not entitled to any share.

It is significant in the instant case to note that after the plaintiff and the defendant got married, the fact of the plaintiff's change of name was endorsed on the title to Doyle Close. This, it is submitted, further crystalizes the plaintiff's beneficial interest in that property.

It was the plaintiff's evidence that when Doyle Close was sold the sum of \$20,000.00 from the proceeds of sale was paid as a deposit on the purchase price of Farrington Drive.

(4) That Farrington Drive having been registered in the joint names of the parties who were then husband and wife, the presumption of advancement applies in the absence of evidence to the contrary and she would be entitled as a joint beneficial tenant.

(5) The presumption of advancement has not been rebutted and I find that the defendant did in fact intend an advancement.

Mrs. Kelly for the plaintiff submitted that the principle "Equality is equity" was being relied upon and asked for half share in the property.

For the defence it is submitted that if the court finds the plaintiff beneficially entitled to a share in Doyle Close then the court ought not to award a percentage higher than the amount of contribution which plaintiff claims she made and this would represent a 3% interest which would be her contribution towards Farrington Drive. Further if the court holds that she held Doyle Close for herself, the contribution of \$20,000.00 towards Farrington Drive would be just over 21% which would be the maximum plaintiff could get. Mr. Mundell referred to the case of Gissing v. Gissing (1970) 2 AER. 780 where Lord Reid said at page 782 (i)

"It is perfectly true that where she does not make direct payments towards the purchase it is less easy to evaluate her shares. If her payments are direct she gets a share proportionate to what she has paid. Otherwise there must be a more rough and ready evaluation. I agree that this does not mean that she would get a half share. I think that the high sounding brocard 'Equality is equity' has been misused. There will, of course, be cases where a half a share is a reasonable estimation, but there will be many others where a fair estimate might be a tenth or a quarter or sometimes even more than half."

In his speech Viscount Dilhorne at page 788 (c) said

"But if it is plain that the contributing spouse has contributed about one quarter, I do not think it is helpful or right for the court to feel obliged to award either one half or nothing."

In the Gissing case the presumption of advancement did not arise. The issue for the court to determine in that case was whether one spouse who made a contribution towards property which was conveyed solely to the other spouse was entitled to a share in the beneficial interest.

What then are the principles when the presumption arises?

In Harris v. Harris (supra) Campbell J.A. said

"However, in cases where a presumption of advancement arises, the presumption of a resulting trust is ousted because the presumption of advancement rests on the presumption of a gift of the beneficial interest in the property to the person in whose name the legal estate is transferred. This presumption of advancement is not based on contribution to the purchase price, it is raised by implication of Law as being consistent with an intention by a husband to satisfy an equitable obligation to support or make provision for a wife or a child or a person in relation to whom he stands in loco parentis."

And further at p. 20, Campbell J.A. said

"... notwithstanding that a substantial contribution towards the purchase price or even the entire purchase price of the property is made by a husband, this fact per se provides no evidence of a contrary intention to that which is to be inferred from the property having been purchased in the name of the wife exclusively or in the joint names of husband and wife. There can be no apportionment solely by reference to the relative contributions of husband and wife where the presumption of advancement arises."

And at page 20 he continued,

"There being no sufficient evidence adduced to rebut the presumption of advancement or any relevant evidence of what share each was to have in the event the presumption was not rebutted. A half share interest is by implication of law advanced to the appellant."

I respectfully wish to adopt these statements of the law as my own and accordingly it is ordered:-

- (1) That the plaintiff is beneficially entitled to an interest equal to one half of the value in the premises situated at 12 Farringdon Drive, Kingston 6, in the parish of St. Andrew registered at Volume 1042, Folio

389 of the Register Book of Titles.

- (2) That the defendant, should he so desire, purchase the plaintiff's share in the said premises within three months from the date hereof, failing which the property is to be sold by public auction or private treaty and the proceeds be divided equally.
- (3) If the defendant fails to join in any agreement for sale or transfer to enable the sale of the said premises to be completed within the time prescribed, that the Registrar of the court should execute the agreement for sale or transfer in his place.
- (4) That the Registrar of Titles is directed to register any transfer executed pursuant to the order made herein.
- (5) That the said premises be valued by a reputable valuator and that the costs of the valuation be borne equally by the parties.
- (6) The plaintiff's costs of these proceedings to be paid by the defendant.
- (7) Liberty to apply.