

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E176 OF 1987

BETWEEN MONICA WHITTER PLAINTIFF

A N D SLYDIE BASIL JOSEPH WHITTER DEFENDANT

W.B. Frankson, Q.C., and B.E. Frankson, instructed by B.E. Frankson & Co. for plaintiff.

Enos Grant for defendant.

HEARD: 19th November, 4th December, 1987
& 25th January, 1988

PANTON, J.

On the 24th February, 1975, transfer number 319710 dated the 5th February, 1975, in relation to the property in question was registered in the names of the plaintiff and the defendant as joint tenants. The consideration was \$78,000. The note of the transfer on the certificate of title referred to the plaintiff as the wife of the defendant.

The plaintiff has asserted that this property was to be the matrimonial home. In an affidavit dated 5th November, 1987, she claims that she decided to sell the matrimonial home, no. 22 Edward Road; Bromley, Kent, England, at the persuasion of the defendant and to give the proceeds of the sale to the defendant because the defendant and herself had decided to make the newly acquired property their permanent home.

The defendant, on the other hand, has asserted that there was no intention to use this property as the matrimonial home and that although there were matrimonial difficulties, the property was purchased in their joint names for his convenience and advantage. This is reminiscent of Harris v. Harris (Supreme Court Civil Appeal 1/81). Indeed, the defendant wrote a letter to his banker to this effect.

The defendant is now using two letters dated 17th March, 1981, and 27th April, 1981, written by the plaintiff, as evidence that

2.

the plaintiff has no claim to the property in question. I cannot accept that interpretation. I find that these letters were borne out of frustration on the part of the plaintiff in relation to what she obviously regarded as devious and deceptive behaviour by the defendant. She obviously felt that there was ground for her to contest but she would not stoop to indulge in a contest with someone who had fallen very low in her estimation. Why else would she say, "I can't fight dirt and you are dirt and a theif (sic). You have enough people chasing you for their monies so keep the rest". She has, however, by filing this summons, clearly indicated that she has had second thoughts.

I find as probably true the evidence that the plaintiff sold 22 Edward Road, Bromley, Kent, England, at the persuasion of the defendant with a view to giving the proceeds to the defendant because the defendant and herself had decided to make the newly acquired property their permanent home. I find that the net proceeds of that sale were given to the defendant. These proceeds were apparently substantial. I do not believe the defendant when he says that the purchase of the property was unconnected with a future matrimonial home.

The title here indicates that there has been a transfer into the names of the parties as joint tenants. To my mind, in the absence of fraud or mistake, that conclusively declares the rights of the parties for all times. Section 68 of the Registration of Titles Act reads thus:

"No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor or having any estate or interest in, or power to appoint

3.

or dispose of the land therein described is
 seized or possessed of such estate or interest
 or has such power."

I take further comfort in the words of Lord Upjohn in

Pettitt v. Pettitt (1970) A.C. 777 at page 813:

"In the first place, the beneficial ownership of the property in question must depend upon the agreement of the parties determined at the time of its acquisition. If the property in question is land there must be some lease or conveyance which shows how it was acquired. If that document declares not merely in whom the legal title is to vest but in whom the beneficial title is to vest that necessarily concludes the question of title as between the spouses for all time, and in the absence of fraud or mistake at the time of the transaction the parties cannot go behind it at any time thereafter even on death or the breakup of the marriage

But the document may be silent as to the beneficial title. The property may be conveyed into the name of one or other or into the names of both spouses jointly in which case parol evidence is admissible as to the beneficial ownership that was intended by them at the time of acquisition and if, as very frequently happens as between husband and wife, such evidence is not forthcoming, the Court may be able to draw an inference as to their intentions from their conduct. If there is no such available evidence, then what are called the presumptions come into play. They have been criticised as being out of touch with the realities of today but when properly understood and properly applied to the circumstances of today I remain of the opinion that they remain as useful as ever in solving questions of title."

If I'm wrong in thinking that the words in the title mean what they say, as I'm encouraged to do by section 68 of the Registration of Titles Act, then I look towards the presumption of advancement as, after all, the parties are husband and wife. I have studied the affidavits filed by the parties and have been unable to find anything credit-worthy in them to rebut the presumption.

I hold that the legal title is in the names of the parties jointly and that the beneficial interest is in them both as equitable tenants in common in equal shares.

The Court accordingly orders as requested in the originating summons that the joint tenancy be severed and that a tenancy in common

4.

in equal shares be substituted.

Order for sale is accordingly made with the proceeds being divided equally - either party to have first option to purchase the interest of the other.

Costs of this summons to be the plaintiff's; such costs to be agreed or taxed.