IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E.275/1990

BETWEEN	MAJORIE WILSON	APPLICANT
A N D	RONALD WILSON	RESPONDENT

Richard Small & Mrs. N. Scott-Bonnick instructed by Scott-Bhoorasingh & Bonnick for the Applicant.

Paul Beswick instructed by Ballentine & Beswick for Respondent/Defendant.

Heard: February 16, June 26 & 27, July 3, 1995; & April 11, 1997.

WESLEY JAMES, J.

By Originating Summons dated October 4, 1990 the applicant seeks the following principal declaration/order:

(1) A declaration as to the beneficial interest in all that land known as Havendale Heights in the parish of Saint Andrew and comprised in the Certificate of Title registered at Volume 997 Folio 569 of the Register Book of Titles.

(2) An Order that the property comprised in Certificate of Title registered at Volume 997 Folio 569 be sold and the costs of such sale be paid out of the gross proceeds and the net proceeds be divided proportionately to the beneficial interest of either party.

The applicant and respondent were married in January, 1974. They lived together until 1989 when they separated. Before the hearing of these proceedings the parties were already divorced.

This kind of proceedings seem to come before the Courts in large numbers. The Courts are asked to determine the legal rights of two individuals who during the acquisition of assets may not have given sufficient thought to ownership of such property.

The parties lived together in several places including a house at Glenmuir Terrace, May Pen Clarendon.

The applicant asserts that this house was acquired by the respondent from whose salary the mortgage instalments were deducted. She said she contributed to the general upkeep of the house, purchased furnishings, food and assisted with repairs.

Having read the affidavits and heard submissions from Counsel on each side I think it can fairly be said that there is not much controversy in relation to the acquisition and subsequent mortgage instalment payments in respect of the Glenmuir Terrace house.

The real issue for determination is applicant's share of premises at 43 Riverside Drive. The applicant in her affidavit dated 4th October 1990 deponed that"we borrowed the sum of $175,000.00 from Workers Bank Trust to complete the said purchase." Later in her affidavit dated 10th February, 1995 she deponed that the respondent never required her to contribute to the deposit or the mortgage payments.

The respondent asserts in his affidavit dated 23rd February, 1995 that while in discussions with the Manager of the Worker's Bank, he was advised that although his salary could qualify him for the loan, any additional security would assist the odds of the loan being granted. This was what caused him to ask the applicant to join him in applying for the mortgage. He further deponed that it was the Bank's attorney who prepared all the documents including the transfer document with both their names. That it was understood by the applicant that she had no obligations to pay. The house remained his property and the applicant's involvement in the purchase of the house was that of providing additional security.

On the other hand the applicant deponed in her affidavit of 10th February 1995 that when the house at Riverside Drive was being purchased she and the respondent discussed the title. She further deponed that she told the respondent that she was not being treated as a wife and that she could not agree to remove (to the new house)

unless her name was put on the title. She further deponed that the respondent agreed and took her to a lawyer to sign the agreement for sale and the transfer documents. She also went to the Bank to sign the mortgage documents.

Againsts this set of circumstances the respondent in his affidavit dated 23rd February, 1995 deponed that prior to the purchase of Riverside Drive property the applicant and himself had separated. However, they reconciled in 1984 and the applicant told him of her desire to change her life. That it was during the period after the reconciliation that the process of the acquisition of Riverside Drive commence.

Mr. Richard Small on behalf of the applicant submitted that where one spouse makes a purchase in the joint names of husband and wife there is a presumption in equity that the spouse has made a gift to the other of the beneficial interest. He further submitted that the burden of rebutting the presumption that arises in this case rests on the respondent. He said that from the conduct of the respondent viz. that of placing the applicant's name on the title he was at the very least making a gift to her.

He also submitted that on the particular facts of this case there is also an assertion that the respondent was giving effect to an understanding between them. The fact that the subject property is the matrimonial home strengthens the presumption already set out above.

Mr. Small further placed reliance on Harris v. Harris S. C.C.A No.1/81 delivered July 30, 1982 (unreported). In that case Campbell JA. said that:-

> "The presumption of advancement .....
> is not weakened or negatived by proof of
> absence of contribution ..... having
> been made by the person in whose favour
> the presumption of advancement is raised."

He also relied on Lynch v. Lynch S. C.C.A. 36/89 delivered February 2, 1991.

Mr. Small further submitted that the fact that the applicant acquires separate property at Mineral Heights during the course of the marriage does not negative the presumption of advancement which arises from the placing of the applicant's name as joint tenant on the Title of the matrimonial home. He also relied on Gordon v. Gordon S. C.C.A No.76/87 delivered July 31, 1989.

He further submitted that even if a Court should find that there was no contribution by the applicant, she would be entitled to a half (½) share of the property. He said this right arises as a result of a combination of her legal estate as a joint tenant and the presumption of advancement which in equity is in her favour. Mr. Small also relied on Pettit v. Pettit 1970 A.C. at page 815 where 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."

Mr. Beswick in his submissions also relied on Gordon v. Gordon Supra.

He submitted that rights acquired at the time of the acquisition or transfer cannot be altered without agreement. That the applicant would have been a necessary party by law to subscribe to the subsequent mortgage by Eagle Permanent Building Society.

He then referred to Pettit v. Pettit 1970 A.C. 777 and submitted that the presumption of advancement applies where there is no evidence to the contrary. He then referred to the affidavit of of the applicant dated February 10, 1995 in which she deponed that the respondent told her how he had to share his house with his previous wife and that he was not putting any woman's name on the title. He then submitted that notwithstanding the respondent's concern in that regard he nevertheless changed his mind and gave the applicant a gift. He asks the Court not to hold that the Respondent had such a change of mind.

Mr. Beswick submitted: (1) that in respect of the presumption of advancement the law suggests that it has weakened and the Court ought to be cautious in applying it.

(2) that there is clear evidence of the respondent's intention

(3) that the Court should not find that the presumption of advancement remains unrebutted.

Once again the Court is faced with the difficulties in determining whether the applicant has an interest in the property at 43 Riverside Drive the subject of theseproceedings.

The material before the Court was supplied solely by affidavits. The parties did not pursue their applications to cross-examine the other. It appears to be a feature of proceedings such as these that each party makes allegations concerning acquired interests in property, some of which remain unsubstantiated or is rebutted.

If the applicant has acquired any interest in the subject premises it would be so acquired on the basis of the presumption of advancement. As Carey J.A. illustrated in Lynch v. Lynch S.C.C.A. 36/89 (unreported) dated 4th February, 1991, that Pettit v. Pettit [1969] 2 ALL ER. 385, In Re Bishop (deceased) [1965] 1 ALL ER. 249, Harris v. Harris (supra) are all authority for the proposition that where a husband purchases property in the joint names of his wife and himself a gift to the wife is presumed in the absence of evidence to the contrary.

Both the applicant and the respondent have given different accounts of the circumstances surrounding the applicant's name being put on the title.

I have paid particular attention to those circumstances. I turn now to paras. 9 & 10 of the respondent's affidavit dated 23rd February, 1995. In para.9 he states:

> "Whether the petitioner at anytime told me she was not being treated as a wife I cannot recall, but if so, it was certainly not in the context of a discussion about placing her name on the title to premises at Riverside Drive which discussion never took place at any time, as I have never had any intention of making a gift of any part of the interest in that premises to the petitioner or anyone else."

In the said paragraph 9 of his affidavit dated February 23, 1995 the respondent deponed thus:-

> "That prior to the acquisition of Riverside Drive, the petitioner and I had separated. We reconciled after her baptism in 1984 as she vocalised to me her desire to turn her life around. During the period of reconciliation, I decided to relocate to Kingston and started the process of acquiring Riverside Drive."

The applicant in her affidavit dated 2nd March, 1995 deponed as follows in para. 10.

> "That we decided to buy Riverside Drive because my husband by this time was working for Cigarette Company in Spanish Town and he met in an accident. He then became concerned that the distance from May Pen to Spanish Town was too far to travel. We discussed it and decided to sell Glenmuir Terrace and to buy Riverside Drive."

In para. 11 of the said affidavit she deponed:

> "That it was during the discussions as to whether or not to move that my husband agreed to put my name on the title in recognition of my contribution to our join efforts in building a life together."

The applicant has also deponed in para. 10 of her affidavit dated 10th February 1995 thus:

> "That when the house at Riverside Drive was being purchased both my husband and I were in the Church. That we discussed the title and I told him that I was not being treated as a wife and that I could not agree to move unless my name was on the title."

From the extracts taken from the affidavits of the parties I am of the view that the applicant's recollection of what transpired at the time of the acquisition of the premises at Riverside Drive is preferred to that of the respondent. In any event according to the respondent it was during the period after the reconciliation that he decided to relocate in Kingston and started the process of acquiring Riverside Drive. My view of this is that it is more probable that at that time after the reconciliation that the respondent would be more likely to put his wife's name on the title as a joint beneficial owner. I do not accept that in a situation where the respondent's

salary met the required amount to qualify for the mortgage he would still need additional security.

I believe that this is an attempt by the respondent late in the day to explain away the placing of applicant's name on the title and has failed to rebut the presumption of advancement. I find as a fact that the parties intended at the time of the acquisition of Riverside Drive premises that they both hold the property jointly.

Regarding the property at Mineral Heights no issue arises for my determination and I therefore make no comment.

The Judgment

(1) A declaration that the applicant is entitled equally with the respondent in all that land known as Havendale Heights in the parish of Saint Andrew and comprised in the Certificate of Title registered at Volume 997 Folio 569 of the Register Book of Titles.

(2) An Order that the property comprised in Certificate of Title registered Volume 997 Folio 569 be sold and that the costs of such sale be paid out of the gross proceeds and the net proceeds be divided equally between the applicant and the respondent.

(3) That a reputable valuator be appointed to value the premises registered at Volume 997 Folio 569. If there is no agreement between the parties on a valuator, the Registrar of the Supreme Court appoints a valuator.

(4) That the costs of the valuation be borne by the applicant and the respondent in equal shares.

(5) That the respondent do afford reasonable access to the valuator referred to in paragraph 3.

(6) Unless the parties hereto agree to a private sale of the applicant's interest to the respondent within six (6) months from the date of this judgment, then the

said property be sold by the Registrar of the Supreme Court by Auction.

(7) That in the event of paragraph (6) taking effect that the Registrar of the Supreme Court do settle the conditions of the sale and the reserve price.

(8) That the Registrar of the Supreme Court be empowered to sign the transfer if any of the parties refuse to sign same.

(9) That in the event of a sale by private treaty or of a sale to either party the applicant's Attorney-at-Law do have Carriage of Sale.

Each party will bear his or her own costs.

Liberty to apply.