[2014] JMSC Civ. 131

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009HCV04716

BETWEEN	**TRICIA CARTER**	**CLAIMANT**
AND	**LLOYD PARNELL**	**DEFENDANT**

IN CHAMBERS

Miss Simone Jarrett instructed by Leroy K. Equiano, in care of the Kingston Legal Aid Clinic Limited for the Claimant.

Mr. Leonard Green and Ms. Sylvan Edwards instructed by Chen, Green and Co. for the defendant.

Heard: March 25, 26 and September 15, 2014

Division of Property – Unmarried couple- claim for 50% share of property said not to be intended to be a home although occupied by the family.

P.A. Williams, J.

[1] Miss Tricia Carter, the claimant, and Mr. Lloyd Parnell, the defendant, had a relationship that spanned some nineteen years. She gave birth to six children, the first was born in 1991 and the last in 2001 – all of them she alleges were fathered by the defendant.

[2] During the time of their relationship, land was purchased at Danks Savoy in the parish of Clarendon and a structure was constructed on it. The family resided in

this structure which to this date has not been completed. The parties separated in 2008 and the defendant subsequently got married while the claimant and some of the children remained living at the property which has the postal address of New Danks, Chapleton Post Office.

[3] The separation of the parties led to the commencement of these proceedings by the claimant in an effort to secure her interest in the property. The defendant has countered this claim by denying that she has an entitlement to this property which he alleges he bought for the purpose of operating a hardware business.

The Claim

[4] The Fixed Date Claim Form which commenced proceeding was filed on September 8, 2009 with the first hearing set for the 1st of March 2010. At that time the defendant attended without legal representation and was afforded time to secure same. It was not until in February of 2012 that the defendant attended with his legal representation- when the matter had been firmly set for Trial; his affidavit in response had been filed on September 26, 2011.

[5] The Claimant's Fixed Date Claim Form was amended and further amended by the time this trial commenced. In the final amendment the claimant sought to remedy a failure to comply with provisions of the Supreme Court of Jamaica Civil Procedure Rules, 2002 (the CPR). In rule 8.8 (1) it is provided that a Fixed Date Claim Form must state, inter alia, the enactment under which a claim is made, if it is being made under an enactment. Thus it was in the Further Amended Fixed Date Claim dated 6th of February 2013 that the claimant's matter was expressly set out as having been made under the Property (Rights of Spouses) Act and/ alternatively in common law and equity.

[6] In her submissions Miss Jarrett noted that this failure was cured by an order of this Court allowing her to proceed under this Act and the defendant did not seek to challenge that application .The relief being sought by the claimant, against the

defendant, as set out in the Further Fixed Date Claim Form and dated the 6th of February 2013 is as follows:-

(1) A declaration that the claimant is entitled to fifty percent in all that parcel of land part of Danks Savoy in the parish of Clarendon containing by survey 1 acre 0 roods 3.2 perches of the shape and dimensions and butting as appears by the plan bearing survey department #223489 with dwelling house thereon.

(2) That the property should not be sold until the last child of the union attains the age of eighteen (18) years and that the structure as stated on Valuator's report prepared by John M. Clarke and dated 3rd day of May 2009 be valued at the current value and the defendant be paid on half of the value thereof.

(3) The claimant is to have first option to purchase the property

(4) That if either party is unable to purchase the others share the property be sold on the open market and the proceeds of sale are to be divided accordingly after all reasonable deductions have been made; and the claimant shall be at liberty to deduct a sum totaling half cost of the valuation report from the proceeds of sale due to the defendant.

(5) That claimant's attorney-at-Law to have carriage of sale herein.

(6) That the Registrar of the Supreme Court be authorized to sign all and any documents necessary herein, if either party refuses to sign within fourteen (14) days of being requested to do so.

The Evidence

[7] There is no dispute that the parties met while the defendant was residing with his mother at the latter's home in Kingston. There is no dispute that the defendant

was much older than the claimant when their relationship became intimate. The acrimony that exists between the parties at this time is such that the defendant now challenges her on the issue of her age at the time they met. She said she was seventeen. He said she was older as she had told him “she was old enough and that she was a big woman”. He, in his affidavit, said he was of the opinion that she was over 21 at the time. Under cross-examination he said she told him she was over 19 at the time. There is no dispute that he was in his early fifties.

[8] There is dispute as to when the relationship actually started; she said it was in 1989 that they began a common law relationship. He said he met her in 1990 and in 1991 he assisted her in renting a room in Danks and it was then that a relationship started. There is no dispute however that by December 1991 a daughter had been born to them.

[9] There is no dispute that arising from discussion between them, the land in dispute was bought in January 1991. She said they had discussions about getting their own parcel of land to build their own house and started saving whatever funds they had to purchase the land. He said that the claimant did advise him that lands were being sold in Clarendon and he looked at it because he wanted to do hardware business. He explained that he had bought a minibus from as far back as 1986 and his mother had used his money to buy a truck. It was monies he earned from the bus and truck business that he used to purchase the property. He insisted that the claimant was earning nothing at the time and could not have assisted. She said she worked as a “surger” and although she did not earn much, she contributed what little she could.

[10] There is very little by way of documentary evidence to support either case on this issue. However, there is exhibited a copy of a receipt dated January 9, 1991 whereby Cleveland Duffus of Sangersters Heights ,Chapelton in the parish of Clarendon acknowledges receiving fifty thousand dollars ($50,000.00) from the defendant for 1 acre of land situated at Danks, Savoy at Chapelton. The claimant

signed as witness to this transaction. There is no title exhibited in relation to this property. However the claimant exhibited a tax receipt and a certificate of payment of taxes indicating that the property has a valuation number and that she paid the property taxes owed on the land for the period 2006 to 2010.

[11] The parties are agreed that initially the claimant resided in premises the defendant had rented. Construction commenced on the structure on the land. She said she assisted even in her pregnant state with the construction. He said she had no need to as he had employed a contractor and had workmen do the manual labour.

[12] There is serious dispute as to what was being constructed. She said that she assisted with the construction of a house in which they were to live . He said it was a commercial structure being built not a dwelling house. He intended to build and operate a hardware store.

[13] By the time of the birth of the second child in April of 1993, the claimant said they were given notice to quit the rented premises they then occupied and had to seek other premises to live. She explained how she started raising chicken and doing other jobs to assist in maintaining herself and the children. The defendant countered this assertion by saying that he would keep the chicken for their own domestic use so that their children would get eggs to eat in the mornings and not for any commercial activity. He denies that she was engaged in any kind of employment because he said he always gave her money from his truck and bus business and his pension. He insisted that he provided for all the needs of the claimant and the children. He said she was “a kept person.”

[14] The claimant was challenged on her claim that they were living together at this time. Indeed, the defendant went on to assert that during the entire time, the relationship was best described as a visiting one. He spent most of his time in Kingston with his mother and sent monies and food to the claimant. He exhibited

copies of requests for telegraphic transfers made of the National Commercial Bank at its Half Way Tree Branch to remit sums to its Chapleton Branch payable to the claimant. These were for the period 1994 to 1996 and were for amounts varying from seven hundred to six thousand five hundred dollars.

[15] The claimant insisted that she often had to fend for herself and her children and agreed that the defendant did spend some time in Kingston with his mother. She also agreed that he sometimes sent money to her from Kingston. She denied that theirs was a visiting relationship although she agreed that he spent weeks at a time in Kingston with his mother but she sought to explain these absences as being his efforts to avoid certain situations.

[16] Construction of the structure at Danks seemed to have progressed very slowly. The claimant explained how she was able to assist in the purchasing of material to build as she was throwing partner in order to save from whatever funds she earned. She offered as proof of this activity a letter from the “Banker” with whom she threw partner. While agreeing that the defendant did send her money occasionally, she was not aware of the bus and truck business being his own. She was of the opinion the business was that of his mother. She did not think the defendant was a good business man as she stated how he wasted whatever monies he had. He denied this assertion.

[17] The claimant said that in 1999 when they were again given notice to quit the premises they were then living at, there were now five (5) children and she said she desperately wished to stop living in rented premises. The defendant said he gave her fifteen thousand dollars to find somewhere else to live. She denied receiving any monies from him but instead she said he left her for two months, with the children, for her to find somewhere to go.

[18] It was at this time that she decided to take up residence in the structure on the property. She explained how persons in the community, neighbours and her

former land lady assisted her in fixing up what was to be the bathroom of the house. They then moved into it as it was; without flooring, and with no running water or electricity. The defendant agreed that she moved into the unfinished structure but said it was without his permission. He said he felt she forced his hand such that he called in workmen to finish a part of the building with the clear understanding that this would be a temporary arrangement until suitable accommodation was found.

[19] It is noted that in one affidavit the claimant described this room in which they lived as the bathroom and in another she referred to it as the kitchen. In any event she said that after an absence of two months, the defendant joined them in living in this one room. This living arrangement continued for some time.

[20] The claimant said that it was in 2003 when she got a job on a construction site which, along with her rearing chickens and selling eggs as well as selling in the market, enabled her to save some funds. With these funds she said she fixed up the room. The house she said was at belt course height at the time of the commencement of these proceedings. The building, she said as lined out consist of three bedrooms, two bathrooms, one kitchen, living room and verandah. Whenever she had the funds she would acquire material, pay a mason and together with the children would continue to work on their home.

[21] The defendant claimed to be unaware of these activities being undertaken on the building. He insisted that he lived at his mother's house and visited the claimant on occasion. He however also said he planted fruit trees on the property and raised livestock with a view towards developing the land. However, he insisted it was his intention to do a hardware business and nothing else on the property.

[22] The claimant agreed that he did these activities on the property which she pointed out he could not have done if he had lived in Kingston. She knew nothing about any intention to "construct a hardware business" and claimed to have first

heard about this when the defendant stated so in his affidavit filed in this matter. In any event, the defendant explained that the claimant had taken no part in developing the property. He claimed while being cross-examined, that he had two (2) witnesses waiting to give evidence as to having done whatever construction was done on the property. These persons were never called as there were no affidavits filed for any witnesses in support of the defendant's case.

[23] Witnesses were called on behalf of the claimant however. Two persons spoke to the fact that they saw the defendant living at the property. The first a Mr. Wilbert Edwards gave evidence that he always saw the defendant at the house and would often speak and play dominoes with him. Under cross-examination he was asked if he would see the defendant come into Danks leave and return and he said yes. Further he put it that the defendant sometimes would walk out and seemed to be suggesting that this happened because of "friction" between the couple.

[24] The second witness was the daughter of the couple and in fact their eldest child Beonho. She declared that from she was aware of her surroundings she was aware of the fact her parents were living together. She remembered him taking them as children to the bus stop early in the morning, playing with them and taking them to the river. She did recall his being away at times and said at these times he would have gone to his mother's house. She herself went to visit and stay with him at that house at times.

[25] The defendant was dismissive of the evidence given by these witnesses and sought to ascribe motives to their coming forward to give this evidence. He insisted he never lived with the claimant but visited her at these premises where she continued to live against his wishes. He however almost contemptuously declared how he always made sure they were "okay" by giving her up to fifteen

thousand dollars per month for grocery so that the children were never out of anything to eat.

[26] The claimant also exhibited a report from a John Clarke, valuator of Chapelton. The defendant challenged the credibility of this report especially since he urged that Mr. Clarke has not demonstrated that he has any credentials for providing expert evidence of the value of the property. It noted that the property is registered in the name of Lloyd Parnell although there was no Volume or Folio number given for any registered title. The land area is described as containing by survey 1 acre of land with 2904 square feet with a 4 bedroom unfinished dwelling house, kitchen, living, 2 bathrooms, verandah, passage. The report also included as a description of the land area the following:

> "1 room live into and the rest don't reach belcourse construction of blocks, street, cement and 1 room zinc"

[27] One other useful information from this report was in its description of the type of neighbourhood in which the property is located. It stated that it forms part of the residential forming (sic) community of Danks, Clarendon. The claimant pointed to this description to further her challenge to the defendant's claim that it was his intention to do hardware business from this location.

[28] In seeking to establish that his fixed place of abode was in Kingston, the defendant relied on the exhibited copies of the request for telegraphic transfer which showed his address as 15 Grayden Avenue, Kingston 10 and his bank account being with the Half Way Tree Branch of the National Commercial Bank. The claimant in response, exhibited a copy of a hire purchase agreement with a store which indicates items being purchased by the defendant in December 2003 with his address given as New Danks District.

The submissions

[29] There were no written submissions filed on behalf of the defendant. Orders were made from November 2013 for the parties to file and serve skeleton arguments and list of authorities. Neither party complied but the claimant's attorney-at-Law had previously filed skeleton submissions which were relied on at the commencement of the trial. After the evidence was completed, the attorneys-at-law made oral submissions and were asked to reduce them to writing by the 11th of April 2014. None has been done on behalf of the defendant.

For the claimant

[30] Miss Jarrett identified two issues to be determined:-

1. What portion of the property are the parties entitled to?
2. How is that interest to be determined?

[31] In addressing these issues Miss Jarrett proceeded to review the evidence given by the claimant through her three (3) affidavits and under cross-examination. She then reviewed that given by the defendant. In so doing she highlighted the efforts of the claimant to fix up the property and failure of the defendant to assist her or even to maintain the children. She noted the denial of the defendant of being the father of the last two children born to the claimant in 1999 and 2001. This was in spite of the fact that attempts in the Resident Magistrate's Court to have tests done to determine paternity were thwarted by the defendant who eventually admitted paternity and was ordered to pay maintenance for them.

[32] She also noted that the defendant has never provided any proof of any of the business he alleges he was involved in. The claimant said his only income was from his English pension and there was no evidence offered to deny this. The claimant's evidence of her contribution to the purchase of the property is urged to be the more credible.

[33] Miss Jarrett also noted what she described as inconsistencies and blatant fabrication on the part of the defendant which she said was aimed at denying a share to the claimant at all cost. She urged that the claimant had proven that they had lived together for over five (5) years and that she had made substantial contributions both directly and indirectly to the property which ought to be regarded as the family home. She opined that the claimant as primary care giver provided for the six (6) children whereas the defendant is now a bitter man who is not willing to give the claimant any recognition for her contribution.

[34] She submitted that the parties were both single persons during the relevant period of their relationship. The parties therefore had cohabited from 1991 to 2008 with brief periods of separation. She pointed out that the youngest child was born whilst the family lived at the property - the family home. There was no challenge, she noted to the claimant's assertion that the parties had finally separated in 2008.

[35] Miss Jarrett also considered the defendants contention that the building was intended to be a hardware store. She posited that the name of the building is irrelevant since it is clear that it was the family home. She noted that animals were being raised there, fruit trees were planted, the usual domestic activities and chores were being carried on there. There was no sign of any establishment of hardware activity on the part of the defendant from the time the property had been acquired.

[36] Miss Jarrett noted the definition of family home as given in the Property Rights of Spouses Act (PROSA) and opined that the facts show that this building was used solely for the purposes of the parties' household. She referred to the case of **Thelma Cunningham v Leroy Cunningham claim No. 2009HCV02358** in seeking to further her argument that the claimant had proven factors that gave her entitlement to the property whether because it was the family home or because it was property the court could still determine the parties' interest in.

[37] It was submitted that the claimant has proven that:-

- She has made substantial financial contribution, directly and indirectly to the acquisition of the properly
- The property is the matrimonial home.
-The claimant is the primary care giver and provider for the 6 children of the union.
- The claimant managed the household and performed household duties.
- She paid money to maintain and increase the value of the property.
- She physically labored in the construction of the home.

For the defendant

[38] In his oral submissions, Mr. Green launched his defence of the case for the defendant with a reminder that to qualify for entitlement under PROSA, the parties must be proven to fall within the definition of spouse. In the instant case, he argued there is no evidence that the defendant was a single man at the time he was in a relationship with the claimant.

[39] He posited that the issue of co-habitation is a question of fact and this needs be considered against the background of the defendant's insistence that his residential address remained at Greyden Avenue in Kingston. He recognized that they must have lived together for sometime and said that this was not being denied because there were "six (6) good reasons" showing they had been together.

[40] Mr. Green also queried whether the incomplete structure can be considered a family home for the purpose of the legislation. He argued that it was a fact that it was the defendant who bought the property and paid all monies for it. There is no evidence he had bought it for the claimant and Mr. Green urged that the intention for the usage for the property as expressed by the defendant ought to be accepted.

The applicable law and the evidence.

[41] The claimant brings these proceedings primarily under PROSA and therefore the appropriate starting point must be a consideration of the relevant provisions. The first issue to be considered is whether the legislation is indeed applicable given the fact that the defendant is arguing that they ought not to be considered as falling into the definition of spouse and the property in question ought not to be defined as a family home.

[42] Section 2 is the definition section of PROSA and for the purposes to this matter there are four definitions which are considered relevant:-

> 2 (1) in this Act –
>
> "Cohabit" means to live together in a conjugal relationship outside of marriage and "cohabitation" shall be construed accordingly;
>
> "Family home" means the dwelling house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, building, or improvements appurtenant to such dwelling house and used wholly or mainly for the purpose of the household, but shall not include such a dwelling house which is a gift to one spouse by a donor who intended that spouse alone to benefit;
>
> "Property" means any real or personal property, any estate or interest in real or personal property, any money any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled;
>
> "Spouse" includes –
>
> (a) A single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years.

(b) A single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years. Immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be.

[43] Mr. Green in his submission took issue with the fact that there was no evidence that the defendant was in fact single. This is clearly true but equally true is the fact the there is no evidence that he was not. This might sound trite but it is said in the context that information as to one's marital status would well be regarded as information particularly to be known by that individual. The issue as a defence under PROSA, ought more properly be raised as a sword than a shield in that, if in fact the individual is alleging that he\she was not single and therefore could not be subjected to provisions of PROSA; then it would not be unreasonable to expect this would be established from the earliest possible moment to prevent the matter going through a prolonged passage through the courts. This matter was never defended as if the question of marital status was an issue. In all circumstances, I am satisfied that both parties were single when the relationship commenced.

[44] The evidence is undisputed that the claimant was a young woman when the parties met. The defendant was a man still living at home with his mother and was in his fifties. He had evidently worked in England and had reached retirement or had suffered some disabilities since the evidence suggested he was receiving some form of pension form England. The defendant did not seek to challenge the claimant's assertion that it was only after he had finally "walked out on her and the children" that he had got married in 2010 to someone else. There is nothing to dispute that he had been single until that time.

[45] The next issue is whether the parties had in fact been cohabiting for the requisite period of five years immediately preceding the institution of proceedings under the Act or the termination of cohabitation. These proceedings, it has already been noted, commenced in 2009 at which time the parties had been separated from December 2008. Under cross-examination the defendant was vaguer as to

the time of separation and declared it was between 2007 and 2008. He however failed to raise a challenge to the claimant's declaration that the proceedings had commenced within the twelve (12) months as stipulated by the Act for such matters to commence. I am satisfied that the date given by the claimant as to separation can be accepted.

[46] The defendant was insistent that theirs was a visiting relationship. It however could be accepted that he must have spent some significant time at the property if he is to be believed that he bought chickens for the children to raise, bought goats and planted fruit trees. He also agreed that he would often go to his mother's house in Kingston. It is somewhat significant that throughout the evidence given, the house in Kingston was referred to as his mother's. It was to my mind the evidence of Wilbert Edwards and more so that of the parties' daughter Beonho Parnell that I found compelling in resolving this matter.

[47] I was particularly impressed by Miss Parnell's memories of her father being at the address in Clarendon at times to take the children out to get the bus in the mornings to go to school, to go to river and to play with them. Although the defendant sought to discredit her by suggesting she would say whatever her mother told her to, I was not convinced that this was in fact so. The claimant and Miss Parnell agreed that the defendant would indeed leave to visit his mother and even took the children with him at times. The evidence satisfies that he would indeed visit his mother while living with his family permanently in Danks.

[48] Mr. Wilbert Edwards struck me as a simple man who had come, reluctantly, to tell the Court what he knew. The defendant tried to discredit him as well, by seeming to want to suggest some clandestine relationship between him and the claimant. I found these efforts to be distasteful and especially so since they came as the defendant was being cross-examined without any such suggestions being put to Mr. Edwards as he gave his evidence.

[49] While it is true that the defendant had exhibited documents which show that for a period in the 1990's, he maintained a bank account with an institution in

Kingston, it is also apparent from documents the claimant produced, that by 2003 he was having furniture bought for his address in New Danks District, Clarendon. There is no challenge successfully mounted to oust the evidence of the claimant, Mr. Edwards and Miss Parnell that up to 2008, the defendant lived and cohabited with the claimant and this had been for a period in excess of the five years required by statute before separation in that year. It is perhaps to be viewed as telling, that in his affidavit given in September 2011, the defendant gave his true place of abode as Chapleton Post Office in the parish of Clarendon.

[50] Having been satisfied that the parties in this matter fall within the definition of the "spouse" such that they come within the jurisdiction of PROSA, I will now consider the subject-matter the claimant is seeking to have an interest in. The property at Danks on which the defendant says he intended to develop a hardware business is beyond dispute the place where the family lived for over ten (10) years. Regardless of what the defendant intended it to be, it is where they called home. I have already mentioned the activities that the defendant himself admitted took place at this property. Further to that, he spoke almost contemptuously of how he considered the claimant to be a kept woman who he sought to provide everything she needed at that property. He did not make any effort to seek to find her anywhere else to go and blamed her for the fact that she lived there for this extended period.

[51] The question now is whether this was a "family home" within the definition given above. One of the most useful exposition to be found on this concept of the "family home" is to be found in **Peaches Stewart v Rupert Stewart Claim No. HCV0327/2007** delivered November 6, 2007; a decision by Sykes J. The learned judge sought to define the terms by looking at them in their ordinary meaning. He went on then to say this at paragraph 24:

> "The legislation in my view, was trying to communicate as best it could that the courts when applying this definition should look at the facts in a common sense way and ask itself this question, "Is this the dwelling house where the

> parties lived?" in answering this question, which is clearly a fact sensitive one the courts looks at things such as (a) sleeping and eating arrangements; (b) location of clothes and other personal items; (c) if there are children, where do they eat sleep and get dressed for school and (d) receiving correspondence. There are other factors that should be included but these are some of the considerations that a court ought to have in mind. It is not a question of totting up the list and then concluding that a majority points to one house over another. It is a qualitative assessment involving the weighing of factors."

[52] The clouding of the issue arises from the defendant's assertion that it was his intention to develop a hardware business. It is however clear that after many years the property, while occupied, was never developed to accommodate such a business. Between the time of purchase and the time of occupation, there seems to have been no effort to carry out his intention and no explanation has been given for this failure. Once the claimant took their family to reside on the property, he assisted, he alleged, to have it fixed up to accommodate them. Although the claimant denied this to be the case, the fact is whatever was fixed up and however it was fixed up by 2003, the defendant was buying furniture for that property. The type of furniture bought was clearly more intended for a home and not a hardware store –one 48cm television and one sleep-on-it back support divan.

[53] I am in agreement with the defendant that the report by the valuator is not impressive as one which should be relied upon in establishing the value of the property. However, I find it useful in its description of what he saw lined out. It was noted that what was there appeared to be four bedrooms, a kitchen and other rooms consistent with a house. The defendant has not in any way sought to suggest that he had done anything to further his intention of developing the structure into the hardware business.

[54] I am satisfied, that the structure on the property at Danks was the home for the Parnell family; the claimant, the defendant and their six children. It seemed to have been hardly suitable to have accommodated them all but it did. It is clear that the efforts of the claimant made it into their home. The defendant's presence and activities in the home went so far that a child was conceived and born at that home in 2001. It was their dwelling house – the family's permanent abode.

[55] I am therefore satisfied that this was a dwelling house which was the principal residence of this family. The land on which it was built was used wholly for the purpose of the household. The dwelling house and the land are properly to be considered as the "family home".

[56] Having determined that the property falls within the definition of a family home, the provisions of PROSA for the division of same are to be considered. At section 6(1) is stated:

6-(1) Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home,

(a) on the grant of a decree of dissolution of a marriage or the termination of cohabitation;

(b) on the grant of a decree of nullity of marriage;

(c) where a husband and wife have separated and there is no likelihood of reconciliation

[57] Section 7 of PROSA is also to be considered as relevant as it indicates the power of the court to vary the equal share rule and states inter alia:

7 (1) Where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half the family home, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant including:

(a) That the family home was inherited by one spouse

(b) That the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation

(c) That the marriage is of short duration.

(2) In subsection (1) interested party means –

(a) A spouse

(b) ….

(c) ….

[58] Once the property in question is determined to be the family home each party is automatically entitled to a 50% share. This share can only be varied if the court is of the opinion it is unreasonable or unjust to do so. It is now appreciated that such factors as contribution and intention play no part in making the declaration of interest. In the instant case the factors outlined in section 7 that may give rise to a variation, does not arise. There has been no other evidence presented that would suggest that the 50:50 division ought to be varied.

The Order

(1) It is declared that the claimant is entitled to 50% interest in all that parcel of land part of Danks Savoy in the parish of Clarendon containing by survey 1 Acre O rods 3.2 perches of the shape and dimensions and butting as appears by the plan bearing survey dept # 223489 with dwelling house thereon.

(2) The property including the dwelling house is to be valued by a valuator to be agreed between the parties and if the parties cannot agree to a valuator, the Registrar of the Supreme Court is herby empowered to select one on application of either party. Both parties are to bear equally the cost of the valuation.

(3) The property should not be sold until the last child of the union attains the age of 18 years.

(4) The claimant is to have first option to purchase the defendant's 50% share in the property such option to be exercised within six (6) months of the last child attaining the age of 18 years.

(5) If either party is unable to purchase the share of the other, then the property is to be sold on the open market and the proceeds of sale are to be divided accordingly 50:50 between the parties after all reasonable deductions have be made.

(6) The claimant's attorney-at-Law is to have carriage of sale.

(7) The Registrar of the Supreme Court is authorized to sign all and any documents, if either party refuses to sign within fourteen (14) days of being requested to do so.

(8) Each party to bear their own cost.

(9) Liberty to apply.