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Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO.215 OF 1993

IN THE MATTER OF ALL THAT PARCEL OF LAND PART OF RUNAWAY BAY in the parish of Saint Ann registered Volume of Titles.

BETWEEN	FLORENCE EDWARDS	PLAINTIFF/APPLICANT
A N D	WASSELL GEORGE PATTEN	DEFENDANT/RESPONDENT

Ernest Smith and Miss Carleen McFarlane for Applicant

Nelton Forsythe for Respondent.

Heard: January 10, 1994, February 27, 1995 & March 31, 1995

LANGRIN, J.

This is an application on Originating Summons in which the Applicant claims to be entitled as sole owner and seeks the following declarations and orders:

(1) That Florence Edwards is the sole proprietor of land at Runaway Bay in the parish of St. Ann registered at Volume 677 Folio 51 of the Register Book of Titles of Jamaica.

(2) That Wessell George Patten has no land registered at Volume 677 Folio 51.

(3) That the name Wessell George Patten be removed from the Register Book of Titles as Tenant in Common along with Florence Edwards upon such terms and conditions as this Honourable Court thinks fit.

(4) That this Honourable Court will declare the respective interest of the Plaintiff and the Defendant in the property registered at Volume 677 Folio 51.

Applicant's Case

In her affidavit evidence the applicant stated that in the year 1986 she entered into an agreement with her husband William Edwards for the purchase of the relevant property. Because she

was lacking in sufficient funds to purchase the property she approached the Jamaica National Building Society in order to obtain a loan by way of mortgage. She was then advised that in view of her age she needed someone to join in the mortgage application. It was then that she approached her brother, the respondent to join her in the application.

Her brother and herself were registered as Tenants in Common on the Certificate of Title.

As part of a divorce settlement between herself and her husband in respect to the matrimonial property at Vol.677 Folio 51, she was entitled to a 50% share of the property. The agreement between herself and her husband clearly stated that she would purchase his interest for the sum of $150,000, the property having been valued for $300,000.

Both parties contributed equally to the deposit and mortgage payments in respect of the $150,000 loan from the Building Society.

Substantial repairs were effected on the premises and in this regard a considerable amount of the repairs were paid for by the respondent.

Respondent's Case

He is entitled to one half the property in question since at the time of acquisition the applicant would have been unable to acquire the property due to her impecuniosity. On the 15th February, 1986 he paid US4300.00 to the applicant's Attorney as part payment of deposit. Between 1986 and 1991 he spent more than $53,000 to repair and refurbish the property.

I accept the evidence on both sides that each party contributed to the initial deposit and monthly mortgage payments.

I am satisfied that the responsibility for the mortgage payments as well as the initial deposit were borne equally by the parties.

On an admission by the Respondent that he was aware that the property was valued for $300,000.00 and that one half interest in the property was credited to his sister as a consequence of a divorce settlement, I hold that the respondent's interest only pertain to one half of the property.

On 31st May, 1991 Mr. G. W. Thompson, Attorney-at-Law on behalf of the applicant wrote to the Respondent making an offer to purchase his interest and share in the property for $100,000.00.

Notwithstanding that offer the Respondent said since April, 1993 he spent more than $66,000 in repair and development of the property. He further stated that the labour cost done for refurbishing the premises is in the region of $198,450.

Conclusion on the evidence of both parties

My conclusion on the evidence is that I find as a fact that only one half of the property valued at $300,000.00 was sold to both parties. Accordingly, the interest of the respondent at the very outset was a share in 50% of the property. I came to this conclusion based on the admission he made not only in his affidavit but under cross-examination.

I find that both parties contributed equally in paying the deposit and the mortgage in that one-half share.

In relation to the improvements done to the property I find that most of it was done subsequent to an offer made by the applicant to purchase the respondent's share in the property.

There was no express or implied agreement between the parties that the improvements should be carried out.

The Law

The applicant claims that the Respondent is only entitled to 25% of the value of the property and no refund of the sum expended for improvements.

The law provides that if two or more persons together purchase property and provide the money in unequal shares the purchasers are presumed to take as tenants in common in shares proportionate to the sums advanced by each. A statement of the law in Muetzel v. Muetzel 1 ALL ER 443 by Edmund Davies L.J. is apposite:

> "..... the fact that one spouse spends money on extension of that house does not mean that the other can claim no part of the increased value of the property resulting from the extension.

> On the contrary, in the absence of specific agreement the extension should be regarded as accretions to the respective shares of each and not as affecting the distribution of the beneficial interests. In other words the divisions must stand whether applied to the house in its original or in its extended form. It therefore follows that in my judgment the present allocation between husband and wife being on a two to one basis, it applies to this matrimonial home as extended and not merely as it originally stood."

In regards to that proportion of the Respondent's expenditure for improvements to the property which relates to the applicant's share of the property in the absence of a husband and wife relationship, a constructive trust is the only formula through which the conscience of equity may find expression.

The constructive trust has come to be treated as a remedy for many cases of unjust enrichment. Whenever the Court considers that the property in question ought to be restored it simply imposes a constructive trust on the recipient.

In the present case the respondent knew that the applicant wanted to purchase his share in the property. He further knew that his interest was only in a 25% share of the property. He also knew that there would be a significant increase in the value by expending money for improvements to the property. There is no evidence that he acted to his detriment.

In these circumstances it is my view that the door to the creation of a constructive trust remains closed. In my judgment there should be no refund of any sums relating to improvements to property, and therefore the claim contended for by the Respondent fails.

It follows therefore that the respective interests of the parties in the property are in the proportion of 75% for the applicant and 25% interest for the respondent. The respondent will derive the benefit from the sum expended for improvements as accretion to his respective share in the property. No additional sum will be paid to him.

Accordingly, I declare that both parties are tenants in common in the said land in proportion of 75% share to the applicant and 25% share to the respondent.

There will be judgment for the Applicant.