

Judgment Book
SUPREME COURT LIBRARY
KINGSTON
JAMAICA

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
FAMILY DIVISION

SUIT NO. F/1995 H-129

IN THE MATTER OF THE MARRIED WOMEN'S
PROPERTY ACT.

A N D

IN THE MATTER OF ALL THAT PARCEL OF
LAND KNOWN AS 4 ELENA PLACE, KINGSTON
19, in the parish of St. Andrew being
the land comprised in Certificate of
Title registered at Volume 1124 Folio
720 of the Register Book of Titles.

BETWEEN VINNATE IONEY HALL PLAINTIFF
A N D LEAFORD DONOVAN HALL DEFENDANT

Mrs. Pamela Benka-Coker Q.C. and Miss McDonald instructed by
Rattray, Patterson and Rattray for Plaintiff.

Mr. Barry Frankson for Defendant.

Heard: February 17, 18, 19 & 20;
March 16, 30 & April 24, 1998

LANGRIN, J.

By an Originating Summons dated December 19, 1995 the
applicant seeks a determination of all questions between the parties
in respect of the ownership of the said property and in particular
the following orders:

1. A declaration that the plaintiff is the sole-
beneficial owner of all that parcel of land known

as 4 Elena Place, Kingston 19 in the parish of St. Andrew being the land comprised in Certificate of Title registered at Volume 1124 Folio of the Register Book of Title.

2. A declaration that the Defendant holds the said property upon trust for the plaintiff entirely.
3. The defendant do transfer all his interest in the said property to the plaintiff.

In this matter the parties presented the usual affidavit evidence and subjected themselves to rigorous cross-examination. What has been established is that the plaintiff a senior accountant was married to the defendant on the 23rd August, 1986. They lived together as man and wife in rented accommodation for a number of years and there are two children of the marriage.

By an agreement for sale dated April 2, 1991 the parties agreed to purchase the relevant property and both parties signed the agreement. Upon completion of the sale the property was registered in the joint names of the parties. The property became the matrimonial home.

Since 1995 the marriage has irretrievably broken down and the wife seeks to have a determination of the question pertaining to her rights in the beneficial interests of the property.

It is the contention of the plaintiff that she owns the property solely, legally and beneficially and that she alone contributed to its purchase. On the other hand, the defendant contends that at all material times it was intended that husband and wife would share equally in the beneficial interest in the property. The purchase of the property was by that joint effort

and he is entitled to one half share in the property.

The plaintiff deponed that when she met the defendant he was an Accounts Clerk with the Jamaica Mortgage Bank. In 1986 he was made redundant. Since that time he has remained unemployed except for a short period when he was self-employed by selling and distributing paper towels. She was employed to Peat Marwick Mitchell, Chartered Accountant when she met her husband and continued there in that position until she left in 1980. She worked as a Chief Accountant with the Alkali Group of Companies for 9 years. Since July, 1990 she has been employed to Life of Jamaica.

The evidence is clear that the property was purchased solely on the basis of her financial strength. She paid the costs of the Transfer and the Stamp Duty. Copies of executed cheques totalling \$59,391.00 were exhibited to her affidavit to confirm that she alone paid the deposit. She further deponed that her salary and personal collateral were the only sources of income used to qualify her for the joint mortgage obtained from Life of Jamaica and National Housing Trust. All the monthly mortgage payments were deducted from her salary. It is also her evidence that she assumed full financial responsibility for the household because her husband appeared unwilling to work.

The plaintiff is adamant, even under Cross-examination that she permitted her husband's name to be placed on the title as a matter of convenience and at no time she intended to give him a gift or that he should be an owner of the property.

The respondent under cross-examination by Mrs. Benka Coker Q.C. made the following admissions:

- (1) I don't know whether the property was insured.

- (2) Apart from plumbing I have never done any repairs to house.
- (3) The house was purchased from Mrs. Hall's friend.
- (4) I agree that two mortgages were obtained on house.
- (5) I agree that in relation to both houses only Mrs. Hall's assets were considered. In section of form dealing with employment history I had no employment history recorded. Only Mrs. Hall's history was recorded.
- (6) I agree that at all times repayment of both loans came from Mrs. Hall's salary.
- (7) I have never repaid any loans on Mrs. Hall's Mortgage.
- (8) I paid no money in respect of the purchase of 4 Elena Place.
- (9) I did not do any refurbishing to 4 Elena Place.
- (10) I was unable to carry my responsibilities in the household."

In Cobb v. Cobb (1955) 2 AER 696 Lord Denning MR. in delivering the judgment of the Court at p.698 had this to say:

"When both husband and wife contribute to the cost and the property is intended to be a continuing provision for them during their joint lives, the Court leans towards the view that the property belongs to them both jointly in equal shares. This is so even where the conveyance is taken in the name of one of them only and their contributions to the costs are unequal, taken, as here, in their joint names and was intended to be owned by them in equal shares. The legal title is in them both jointly and the beneficial interest is in them both as equitable tenants in common in equal shares."

The second is that where there is a common intention as to whom the property is to belong or in what definite shares each should hold is ascertainable, effect should be given to that intention.

Lord Upjohn's observation in Pettit v. Pettit 1970 A.C. p.777 at p.813 is apposite:

"The property may be conveyed 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 conduct. If there is no such available evidence then, what are called the presumptions come into play."

Where the evidence shows substantial contribution whether in moneys or services or both, the maxim; 'Equality is Equity' is applicable.

In Joseph v. Joseph C.A. 13/84; a judgment delivered in 1985 Carey J.A. had this to say:

"In the absence of express agreement on the part of the spouse, the Court will presume or impute that having jointly contributed they intended to share equally. That proportion will be altered only where either the share can be precisely ascertained or the contribution is trifling."

In the light of the evidence which has been adduced before me it is reasonable to conclude that the wife is an ambitious hard-working woman who has contributed significantly to the welfare of her family. The husband on the other hand was unable to assume his financial responsibility in the household during

the entire period of the marriage. On his own admission he did not contribute to the acquisition of the relevant property.

There was no substantial contribution whether direct or indirect to the acquisition of the property and so no inference may be drawn of a common intention to share in the beneficial interest in the property.

In all the circumstances I find as a fact that there was no agreement or common intention between the parties when the property was purchased in 1991 that the defendant husband should share in the beneficial interest of the property. Further, I find as a fact that he made no contribution to the cost of the property. The law provides that where one spouse's money is used to purchase property which is conveyed into joint names the owner of the legal estate is presumed to hold the property on a resulting trust for the person who provided the funds.

In the case of Dyer v. Dyer (1788) 30 ER. 42 a class of Resulting Trusts was defined by the Court at p.43 as follows:

"The clear result of all the cases without a single exception is that the trust of a legal estate whether freehold or leasehold; whether taken in one name or several; whether jointly or successive results to the man who advances the purchase money. This is a general proposition supported by all the cases and there is nothing to contradict it; and it goes on a strict analogy to the rule of common law that where a feoffment is made without consideration, the use results to the feoffor."

Where a husband purchases property and puts it into his wife's name; or into joint names he is presumed to intend a gift to her by the application of the presumption of advancement. These presumptions are rebuttable by evidence of intention.

There is no evidence that his wife intended to make him a gift of his alleged half share in the property. In fact the wife has categorically denied doing so.

I hold that there was a resulting trust in favour of the plaintiff in respect of the joint interest of the defendant.

Accordingly, it is hereby declared that:

1. A declaration that the plaintiff is the sole beneficial owner of all that parcel of land known as 4 Elena Place, Kingston 19 in the parish of St. Andrew being the land comprised in Certificate of Title registered at Volume 1124 Folio 720 of the Register Book of Title.
2. A declaration that the Defendant holds the said property upon trust for the plaintiff entirely.
3. The defendant do transfer all his interest in the said property to the Plaintiff.

There shall be half costs to the plaintiff to be agreed or taxed.