

IN THE SUPREME COURT OF JUDICATURE OF
CHAMBERS

In Equity

Suit No. E72/80

IN THE MATTER of Premises known as
117 Red Hills Road in the Parish of
St. Andrew, Meadowbridge, Kingston 19
and registered at Volume 1092 Folio 270
of the Register Book of Titles.

AND

IN THE MATTER of the Married Women's
Property Act.

BETWEEN	Albertha Murdock	PLAINTIFF
AND	Vincent Nathaniel Murdock	DEFENDANT

Mr. G. Steer for Plaintiff

Miss D. Lightbourne for Defendant

Heard: 17th September, 1980

~~Handed down:~~ 19th June, 1981

WRIGHT J.

The plaintiff by originating summons has submitted for the
Court's determination the following question:

" What are the respective interests of the plaintiff
and the defendant in premises 117 Red Hills Road,
St. Andrew registered at Volume 1092 Folio 270 of
the Register Book of Titles. "

The Court is asked to order:

- a) That the plaintiff is the sole legal and beneficial
owner of the said premises.
- b) Alternatively, that the Plaintiff is entitled to
such interest as this Honourable may deem fit.

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- c) That the Defendant be ordered to transfer the said premises to the Plaintiff subject to the balance of the outstanding mortgage.
- d) That the said premises be sold and the proceeds divided in such portion as to this Honourable Court may deem just.
- e) Such further and other relief as may be just.
- f) Costs.

Apart from the affidavits filed by the parties (two by the Plaintiff and one by the Defendant) which were supplemented by cross-examination no further evidence was tendered. In the event, therefore, the determination of the question posed rests heavily upon the credit of the parties.

The plaintiff, who is and has been a higgler for a number of years met the defendant shortly after he had returned from England in 1969 and they were married on the 21st June, 1972. According to the plaintiff's affidavit she was granted a Decree Nisi on the 1st May, 1980 on the grounds of cruelty. It appears that at centre of their discontent is the defendant's son who came from England with his father and at the time of the marriage was seven years of age. It is obvious that the plaintiff is an embittered person so much so that she was unable to preserve for long the facade of decorum which presence in a court may tend to impose. She was only restrained from launching into open brawl - albeit one-sided - by the strong reprimand of the Court. Despite the alternatives pleaded it was manifest that the plaintiff wishes to be declared the sole owner of the premises in question.

The defendant's demeanour was a study in contrast. While the plaintiff sat tense and with obvious venom disfiguring her features, he sat composed and answered questions calmly - not with the heat and the haste of a patently acquisitive plaintiff.

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In a matter of this nature it is necessary and important to probe the means of the parties in order to be able to assess their evidence as to the contributions which each claims to have made to the venture. But before embarking upon this exercise it will be of great assistance to examine the circumstances in which the purchase was made as well as the ascertainable intention of the parties.

Why the house was acquired

After the parties were married they went to live at the defendant's home at 15 Deanery Drive. It seems to be generally agreed that so far as the place was concerned she liked it but, according to the plaintiff, a problem arose quite early in the marriage (indeed on the second day) which made her decide to acquire a house of her own where she expected her husband to come and live with her. One thing she made no effort to conceal, even if she were aware of it, is her domineering nature. It was patent in all her allusions to the defendant and seems to be a controlling feature. The problem centred around the seven year old child but the defendant seems not to have been aware of it at the outset. Her version is that the little boy kicked her and told her that the furniture in the house belonged to his father, the defendant. She thereupon began to fear that later on the defendant, though he was not a party to any such incident, and his son may kick her out. Accordingly, she set about looking for a house to purchase for herself. It was in those circumstances^{that} 117 Red Hills Road was bought by her and any payment made by the defendant was done only because she sent him to do so, but the money was all hers.

The defendant testified that it was after they had removed to 117 Red Hills Road that he became aware of the problem concerning the child. He said that the plaintiff and the child

used to play but while they lived at 15 Deanery Drive she did not tell him of the incident but that on two occasions she did express a wish to remove from there. At 117 Red Hills Road she told him why she wanted to remove - the child's behaviour. His intention in acquiring the Red Hills Road premises was to please his wife who had expressed a wish to remove. So that what was being done was the joint acquisition of a new matrimonial home. Indeed, it was not suggested that he well knew he was living by sufferance in his wife's house.

The critical question, therefore, is ~~this~~ "was it a jointly acquired matrimonial home or was it acquired as the sole property of the plaintiff who, quite early in the marriage, (this was in 1973) decided to have her own home in which she would allow her husband to live?"

It is relevant to note that at that time she was not a shelterless person. She already owned a house in Allman Town.

The evidence relating to the method of acquisition is so intertwined with the evidence of the parties' means that it is more convenient to consider them together.

Method of acquisition and the parties' means

a) The Plaintiff's version

The affidavit filed by the plaintiff in support of the originating summons sets out the evidence by which the plaintiff sought to persuade the court that she is the sole legal and beneficial owner of the premises. The relevant paragraphs (4-15) of this affidavit are set below:

4. "That on the 14th May 1973 the Defendant and myself entered into an Agreement to purchase the premises known as 117 Red Hills Road which is registered at Volume 1092 Folio 270 in the joint names of myself and the defendant for \$44,500.00.

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- entering into
5. That at the time of the Agreement to purchase the premises I had an account in my name and my daughter Gwendolyn Walker's name of \$20,500 and I withdrew \$4,500 from the Bank and paid as a deposit to Donald Bernard & Company, Attorneys at Law.
 6. That at that time the defendant who is a retired cabinet maker was not working and he did not give any amount towards the deposit.
 7. That as I was married to the Defendant I instructed that the Title was to be issued in the joint names of myself and the Defendant.
 8. When I withdrew \$4,500.00 from the Savings Account in Government Savings Bank (now known as Workers Bank) there was a balance of \$16,000.00 left in the bank book.
 9. That in July 1973 the Defendant made application to the Victoria Mutal Building Society for a loan of \$24,000.00 which was granted to him.
 10. That in order to obtain the loan the Defendant had to have an account in the Building Society and as he had very little in his account there I went back to the Bank and withdrew \$2,000.00 for him to lodge to the credit of his account in the Victoria Mutal Building Society. This would then leave only \$14,000.00 in my daughter's and my account in the Government Savings Bank.
 11. That a mortgage from myself and the Defendant was prepared and executed by both of us and the \$24,000.00 mortgage money was sent by the Lawyers for the Victoria Mutal Building Society to Donald Bernard & Company Attorneys for the vendor.
 12. That on the 17th July, 1973 Donald Bernard & Company rendered myself and the Defendant an account showing that after debiting ^{our} account with the

purchase price and ~~the~~ half costs of transfer and other relevant expenses and crediting the account with the deposit of \$4,500 which was paid by me and also the mortgage loan of \$24,000 there was a balance due to complete the purchase of \$17,600.88.

13. That at that time the Defendant still had no money to put towards the purchase and so I used what cash I had earned from my business of approximately \$3,650 and withdrew from the Government Savings Bank (now Workers Bank) \$13,950 and went and paid Donald Bernard & Company to complete the purchase.
14. That ~~one~~ half of the house was rented for \$110.00 per month and I collected the rent and had to put \$202 from my earnings with this to pay the mortgage dues.
15. That in about 1978 the rental was increased to \$140.00 per month and so I only had to find out of my earnings approximately \$172.00 per month for the mortgage dues.

If this account is correct then the following points would be concluded in the plaintiff's favour:

1. She had sufficient means and, unaided by the defendant, paid the amount required for the deposit.
2. During the period of the transaction the defendant was impecunious and was, accordingly, unable to make any financial contribution to the purchase price.
3. The presence of the defendant's name on the Title was merely by the grace and favour of the plaintiff, not evidencing any advancement on her part.
4. The defendant's only contribution was to facilitate the raising of a mortgage ^{for} which he carried no pecuniary burden.

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5. The defendant's position would be that of a volunteer - unable to establish any claim either on the basis of contribution or advancement.
6. The premises would^{not} have been acquired with the intention that it should be the matrimonial home but rather the sole property of the plaintiff by whose indulgence the defendant (her husband) was allowed accomodation there.
7. She would in those circumstances be entitled to the order that -

" She is the sole beneficial owner of the premises"

b) The Defendant's version

The defendant meets the plaintiff's claim head-on in paragraph 5 of his affidavit which is set out below:-

5. That the true and correct facts are as follows:
 - a) That at the time of our marriage I owned two properties - one at 15 Deanery Drive, Kingston 3 in the Parish of Saint Andrew and another at 18 Wellington Street in the Parish of Kingston from which I collected monthly rentals of Three Hundred Dollars and Two Hundred Dollars respectively. In addition to this I operated a taxi so that my monthly earnings varied and from which I received an average monthly income of Nine Hundred and Ten Dollars.
 - b) That the Feticioner and I had a joint Savings Account at Royal Bank, Manchester Square to which we both made deposits each week and it was from this account that I withdrew Four Thousand Five Dollars (\$4,500.00) which I paid to Messrs Donald Bernard and Co., as deposit on the property at 117 Red Hills Road in the Parish of Saint Andrew and we were in the process of acquiring same.

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- c) That the Petitioner and I also had a current account in our joint names payable by cheques over the signature of either of us with the said Royal Bank Jamaica Limited and the proceeds of this were used for the financing of her business, and mine.
- d) That the Petitioner did not give the instructions that the Title to the property be issued in our joint names as it was I who made the necessary arrangements with the Vendor and the Vendor's Attorney, the Petitioner only saw the said Attorneys for the first time when I took her to sign the document.
- e) That in order to be eligible for a loan from the Victoria Mutal Building Society I withdrew Two Thousand Dollars (\$2,000.00) from the aforementioned joint savings Account at Royal Bank and lodged it to my account at the said Building Society.
- f) That during the marriage I used to give Petitioner Two Hundred and Fifty Dollars (\$250.00) monthly for payment towards the Mortgage instalments and also to meet the household expenses.
- g) That about 1975 or 1976 I stopped driving the taxi and the Petitioner recommended to me someone to operate it. From this operation the Plaintiff was given One Hundred and Twelve Dollars (\$112.00) weekly in addition to the Two Hundred and Fifty Dollars (\$250.00) which I gave her monthly for payment of the instalments on the said Mortgage. Part of the premises in question was rented for One Hundred and Ten Dollars (\$110.00) and later increased to One Hundred and Forty Dollars (\$140.00) and these were also delivered to Petitioner to assist with the payment of the said mortgage.

- h) That in 1977 I became entitled to Real Property at 5 Fish Lane, Montego Bay in the Parish of Saint James under a Will in the estate of Joscelyn Davis from this property I receive a monthly income of Three Hundred and Twenty Dollars (\$320.00). Such income is part of monies that has been used to assist with paying instalments on the said Mortgage to the Victoria Mutual Building Society.
- i) That the Plaintiff and I had an arrangement whereby I paid the electricity bills and she paid the water rates for the said premises.
- j) That I received a notice in September, 1978 that the Mortgage payments were in arrears and I handed the letter to the Petitioner for the reason that as mentioned above I had been giving her money with which to make these payments so that it was for her to pay the arrears.
- k) That the Petitioner has since July, 1979 refused to take the moneys that I used to give her to pay the Mortgage and household expenses claiming that the house is hers and she wants my name out of it."

What are the points that claim attention, assuming the defendant's version to be true?

- 1) It is not true that the defendant was at the relevant time 'without the necessary means to enable him to participate financially in the acquisition of the premises.
- 2) That he did so participate
- 3) That the defendant's means were not concealed from the plaintiff.
- 4) That the plaintiff sought deliberately to mislead the court on this material aspect of the matter.

- 5) That the leading role in the transaction was played, not by the plaintiff as she claims, but by the defendant.
- 6) That the defendant's name was not on the Title as the grantee of a privilege by the plaintiff as she avers, but as of right.
- 7) That the defendant shared the financial burden of meeting the mortgage payments and continued to do so up to July, 1979 when the relationship between them seemed to have taken a turn for the worse and she refused his contribution.
- 8) That subsequent to the acquisition of the premises the defendant's means appreciated.
- 9) The plaintiff's credit would be very seriously compromised.
- 10) The defendant would be entitled to a share in the premises.

The defendant's forthright pleadings forced the plaintiff to have a second look at her position and by affidavit dated August 29, 1980 she adjusted her stance. It may be worthy of note that her first affidavit is dated 3rd June, 1980 and the defendant's the 11th July, 1980. So that no pleading was allowed to gather dust before the retort was made.

Before dealing with the plaintiff's reply I wish to complete her case as stated in her first affidavit:

The plaintiff's first affidavit (Cont'd)

In paragraph 16 she claims she is solely responsible for the payment of water rates and taxes for the premises out of her earnings.

Paragraph 18 complains that on two occasions (in 1978 and 1979) the mortgage payments were in arrears and that Victoria Mutual Building Society wrote to the

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defendant threatening to put up the place for sale by public auction and that the defendant gave these notices to her and she had to go and pay the amounts - \$1,178 and \$1,823.76.

Unexplained, this would tend to support her contention that the defendant did not share the financial burden attendant upon the acquisition of the premises. But in cross-examination the defendant offered an explanation to which I will come later.

In paragraph 18 of her affidavit the plaintiff states concisely and clearly:

"That the defendant has never paid any money towards the purchase of the premises or the mortgage"

Paragraph 19 discloses that:

"The defendant owns three houses which are rented out and the only money he gives me is on an average of \$100 every quarter (underlining mine) to buy groceries for himself and his son Terry Murdock who resides at the matrimonial home."

That a balance of \$18,000 is still due on the mortgage is disclosed in paragraph 20.

The affidavit ends with this quaint prayer as paragraph 22:

"That in the event of this Honourable Court finding that the defendant is not entitled to pay any share or interest in the premises I pray that this Honourable Court will make an Order for the Defendant to vacate the premises and sign a transfer for his one half interest therein to me and that I continue to pay the mortgage dues to Victoria Mutual Building Society and that the Defendant be ordered to pay the costs of and incident to this originating summons or make such order as to this Honourable Court may deem just."

The Plaintiff's affidavit in reply

The plaintiff admits paragraph 5(b) of the defendant's affidavit which shows that the deposit of \$4,500 came from a joint account in the names of the plaintiff and the defendant at the

Royal Bank and not from a joint account in the names of herself and her daughter at the Government Savings Bank (now Workers Savings and Loan Bank). The difference is attributed to the fact that at the time of making her first affidavit she did not have the Bank Book with her but that she has since found it and so discovered that the account at Royal Bank is in fact in the names of herself and the defendant. A rather likely explanation!

Could she forget whose names are in an account for \$20,500? But what is more she did not at first disclose any account at Royal Bank. All the moneys that she withdrew came from the Government Savings Bank (now Workers and Savings and Loan Bank) according to her! I find this explanation quite implausible.

But she is a person of great tenacity even if wanting in veracity. To clothe her retraction with some plausibility she explained that in December 1971 - some six months before she was married to the defendant - she opened an account at the Royal Bank with \$1,000.00 of her own money to which account the defendant's name was added although "he did not contribute not even one cent to this account". To the court's query seeking clarification as to why his name was included if he contributed nothing she responded:-

" I put defendant's name on the account because he had a car and I operated a business and I would send him to go and buy things and he could jump around "

A very impressive answer if ever I heard one. But it does not impress me as being true and I am aided in my conclusion by her undisguised embarrassment when she gave that answer.

In paragraph 5 she states that by the month of May, 1973 -

" I had an amount to the credit of this account \$12,173.87 and from this account the defendant withdrew \$4,500 to pay to Donald Bernard & Co. as the deposit on the premises."

It is not difficult to detect the effect of the defendant's reply. Not only have the names in the account changed but the amount, the name of the Bank as well and she now assigns the defendant a role which he had originally been denied viz. it is the defendant who made the withdrawal!

Whereas she originally pleaded that the defendant's financial contribution was "an average \$100 every quarter to buy groceries for himself and his son Terry" paragraph 6 of her affidavit adjusts this to read:

" he never gave me more than \$100 per month for housekeeping money and sometimes he would give me no house money etc."

Then again the existence of the account at the Royal Bank Jamaica Ltd in the joint names of the plaintiff and the defendant is admitted with the addition that "the defendant has never contributed to the deposits in this account."

This latter denial apart, the plaintiff has obviously been forced into making very significant concessions. But these were not the only concessions made and made only under persistent pressure. She had claimed that the balance of \$17,600 required to complete the purchase together with half costs of transfer and costs of mortgage was provided from the account in the names of herself and her daughter at the Workers Saving & Loan Bank. If that were so its effect would tell heavily in favour of her claim. However, under cross-examination she was forced to admit that this was not the truth. What she did admit to be true is what the defendant contended and that is that the balance of \$17,600 was paid by means of three cheques -

\$6,000 drawn on the joint account at the Royal Bank;
\$9,000 drawn on the Workers Saving and Loan Bank;
\$3,000 from Barclays Bank to which the plaintiff contributed \$1,000 and the defendant \$2,000.

The defendant said that he gave the refund of \$400 to the plaintiff - whether as of right or in deference to her he did not say. But I got the impression that he treated her with much deference. She seems to be not just the dominant partner but a domineering one.

Again, in her effort to put the purchase beyond the pale of the defendant's concern she stated in cross-examination that she had in fact been looking for a house to purchase before she met her husband. But the weight of the truth was too much for her to withstand for long. Presented with the assertion that she only came into the deal when her husband, the defendant took her to the lawyer to sign the papers she admitted that was so.

I make the rather painful observation that I cannot recall having adjudicated upon a case in which avarice has so blinded a person's eyes to the truth as has obviously happened to this plaintiff. Where the truth is against her interest she has no scruples in denying it and fabricating an alternative.

I am satisfied that both parties had the means to contribute to the acquisition of the property and that they did contribute to the payment of the deposit and the mortgage payments as a joint venture. In my opinion on the facts presented justice is best served by awarding the parties equal shares in the property. But certain adjustments are required. It is clearly identified that the plaintiff paid an amount of \$8,600 over and above what the defendant contributed to the final account of \$17,600. She ought to be given credit for this. Since the break-up of their relationship the plaintiff in order to advance her claim to sole ownership appears to have taken over the payment of the mortgage. She should have credit for one-half of the total such payments - July, 1979 - June, 1980 - twenty four (24) months at \$280 per month i.e. \$3,360.

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She should also receive the equivalent of the defendant's sole occupancy since May 1980 i.e. thirteen (13) months at \$70 per month i.e. \$910.

Accordingly, it is ordered that subject to the under-mentioned provisions, the premises known as 117 Red Hills Road in the parish of St. Andrew, Meadowbridge, Kingston 19 and registered at Voulme 1092 Folio 270 of the Register Book of Titles be sold and the proceeds be divided equally between the plaintiff and the defendant.

Provisions:

1. If the parties cannot agree the sale price then valuation by a valuator, jointly agreed by them to be obtained.
2. From the defendant's one half share of the proceeds of sale there shall be deducted and paid to the plaintiff

a)	excess payments	\$8,600.00
b)	Mortgage payments since July 1979	3,360.00
c)	Equivalent of occupancy by the defendant since May 1980	910.00
		910.00
	TOTAL	\$12,870.00

Each party to stand his/her own costs.

Liberty to apply.

MARTIN L. WRIGHT
Judge.