Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E.249/1996

IN THE MATTER OF THE MARRIED WOMEN"S PROPERTY ACT

BETWEEN	LUNETTE SHEARER	PLAINTIFF
A N D	HUGH LAWSON SHEARER	DEFENDANT

Crafton Miller and Patricia Roberts instructed by Crafton Miller & Co. for the Plaintiff.

Gordon Steer instructed by Chambers, Bunny & Steer for the Defendant.

HEARD: 15th & 28th July, and 8th October, 1999

PITTER J,

The plaintiff and the defendant were married on the 7th October 1947 and the marriage produced three children. At the time of the marriage the plaintiff an accounting clerk was 21 years of age and the defendant a trainee journalist 24 years of age. They lived in rented premises. The defendant bought premises at 89 Chisholm Avenue which they occupied as the matrimonial home. In July 1961 the defendant left the matrimonial home and established a common law relationship with another woman with whom he lived and who bore him a child to the plaintiff's knowledge.
He has not returned to the matrimonial home nor has he resumed cohabitation with the plaintiff since then.
In 1965 he purchased premises No.34 Glendon Circle, thereafter in 1967 he purchased premises Rosemount Drive, Stony Hill and Leas

Flat, Red Hills, St. Andrew in 1978. The defendant also owned lands at Martha Brae in the parish of Trelawny by way of a devise contained in his deceased mother's will.

In June 1996 the plaintiff by Originating Summons brought an action seeking the following orders:-

1. That it be declared that the plaintiff and the defendant are joint owners and entitled to a half share in the following properties at:-

   (a) 89 Chisholm Avenue, Kingston 13, St. Andrew

   (b) 34 Glendon Circle, Kingston 6, St. Andrew

   (c) Rosemont Drive, Stony Hill, St. Andrew

   (d) Leas Flat, Red Hills, St. Andrew

   (e) Martha Brae in the parish of Trelawny

2. That it be declared that the plaintiff is entitled to a half interest in the following personal property held by the defendant interest for her and himself:

   (a) Shares in Life of Jamaica

   (b) Account at C.I.B.C

   (c) Fixed Deposits at the Bank of Nova Scotia Jamaica Limited

   (d) Four (4) motor vehicles

   (e) International Accounts in Cayman, Bahamas and Florida

   (f) Income from Pension and Golf Course

3. That the defendant account to the plaintiff for income and expences with respect to the real properties in No. 1 above and the personal property in No. 2 above from July 1961 to the date of this order.

4. The properties at No. 1 above to be ordered to be sold and the net proceeds of sale be divided equally between the plaintiff and the defendant with either party having the first option to purchase the others share in any property.

5. That the defendant do pay to the plaintiff one-half of the value of the personal property as of the date of the filing and issuance of this summons.

On the 22nd May 1997 on a summons for ancillary relief, by way of maintenance settlement, the defendant was ordered to pay to the plaintiff the sum of $2M and to transfer the property at No. 89 Chisholm Avenue to the plaintiff. This has since been complied with, hence the premises 89 Chisholm Avenue are no longer in dispute.

It is the plaintiff's case that the defendant told her that he wished her to stay at home and care for the children and that he did not want her to work outside of the house and that they agreed that she would take care of the home and family accordingly, meanwhile he would work and manintain the family and provide for its economic security. That it was their common intention that they would share everything equally during the marriage, and in acting upon that common intention she stopped working and stayed at home to look after the husband and children and the house-hold generally to give them more financial freedom to acquire assets. She also said that at the time of purchase of 89 Chisholm Avenue, it was the intention of the defendant and

herself that this would be their joint property and matrimonial home. She further deponed that based on the common intention between herself and the defendant from the commencement of their marriage for her to give up her emoloyment and take care of the family, she had done so to her own financial detriment.

There is no evidence of what the plaintiff's salary was nor when she stopped working. There is also no evidence whether she had ever sought employment during the existence of the marriage or after the separation. As regards the purchase of premises 89 Chisholm Avenue there is no evidence that it was bought from a family savings at the bank. The defendant's evidence which I accept is that there was never any family savings as all the bank accounts that he has had throughout the marriage were in his name alone and that that property was bought by way of a mortgage and paid for out of his own resources. No contribution was made by the plaintiff.

It is of significance that premises No 34 Glendon Circle where the defendant lives,and Leas Flat, Red Hills,were all purchased long after the defendant left the matrimonial home. I find that when he left the home in July 1961, the parties never again lived together as man and wife. The marriage had been effectively terminated at this point, it being irretrievably broken down. This was further demonstrated by the fact that he established a common law relationship with another woman with whom he lived and who bore him a child. The defendant deponed that he could not at that time divorce the plaintiff as there were no provisions

in the Divorce Act to entertain dissolution of marriage on the grounds of irretrievable breakdown. This being so, can it be said that she would have a beneficial interest in these properties?

Mr. Miller for the plainitff relies on the case of **Grant v Edwards and another (1986) 3WLR114** where the Court of Appeal held that where a couple chose to set up house together and property was purchased in the name of one of the parties equity will infer a trust if there was a common intention that both should have a beneficial interest in the property and the non proprietary owner had acted to her detriment upon that intention. It was further held that

> "There had to be conduct from which the common intention could be infered and conduct on the part of the non-proprietary owner, whether directly or indirectly referable to the purchase of the property, that could only be explained by reference to a person acting on the basis of having beneficial interest in the property."

In the instant case there is no evidence of a contribution made by the plaintiff to the defendants' savings. The evidence is that the defendant provided the plaintiff with the sum of $1000 every three months as maintenance, which said sum at that time was substantial. Was there a common intention at the time of the acquisition of the disputed properties? It could not be inferred from the conduct of the defendant whether directly or indirectly that there was this common intention referable to the purchase of these properties that the plaintiff should acquire a beneficial interest in them.

I find that there was never an agreement between the parties that there was a common intention for the plaintiff to have a beneficial interest in properties acquired by the defendant. Even if there were any such intention, this was extinguished when the defendant left the matrimonial home and never returned. His intentions were clear, it could not then be inferred that he intended for the plaintiff to have a beneficial interest in these properties.

Mr. Miller further submits that the principle underlying the law of constructive trust is a remedy for unjust enrichment and he urges the court to use the equitable doctrine of unjust enrichment to remedy the situation in the isntant case. He relies on the case of **Rawluck v Rawluck (1990)** followed by **Peter v Belbow (1993) 101DLR (4th).** In the latter case it was held that the constuctive trust was an appropriate remedy for the unjust enrichment. In a family relationship the work, services and contributions provided by one of the parties need not be clearly and directly linked with specific property in order for a constructive trust to be imposed. As long as there was no compensation paid for the work and services provided by one party to the family relationship, then it can be inferred that these provision permitted the other party to acquire lands or to improve them. These are decisions of the Canadian Courts which are governed by legislation.

The English Law to which we are closely aligned does not recognise the doctrine of unjust enrichment. In Pettitt (1969) 2AER 390, Lord Reid in his judgment said this.

> "Some reference was made to the doctrine of unjust enrichment. I do not think that that helps. The term has been applied to cases where a person who has paid money sues for its return. But there does not appear to be any English case of the doctrine being applied where one person has improved the property of another. And in any case it would only result in a money claim whereas what a spouse who makes an improvement is seeking is generally a beneficial interest in the property which has been improved."

In the case of **Orkapo v Manson Investment Limited (1978) AC 95** at page 104 Lord Diplock said "there is no general doctrine of unjust enrichment recognised in English Law." On this limb of Mr. Miller's submission, he fails.

In order to determine therefore whether the plaintiff has any beneficial interest in the properties acquired after the break up of the marriage in 1961, there must be some evidence of their common intention at that time.

I find that there is no such evidence. Neither is there any subsequent act of the plaintiff or the defendant which would enable the plaintiff to acquire an interest. No such intention or subsequent act has been adduced in evidence.

As regards the claim in respect of personal property there is no proof by way of evidence as to the extent and number of shares the defendant has in Life of Jamaica, and if so how many. There is no evidence of any account at C.I.B.C., any fixed deposits at the Bank of Nova Scotia Jamaica Ltd., any international accounts in Cayman, Bahamas and Florida and

any income from pension and golf course. The defendant has denied these save to say he has a few snares in Life of Jamaica. The claim under this heading fails.

A claim was also made on the pension of the defendant which the plaintiff says is $387,000 per month. In his response the defendant asserts that his monthly pension is $90,210.44 which has not been rebutted, and which I accept. In any event the pension came into being years after the separation and the plaintiff would not be entitled to a beneficial interest.

As regards the claim on the motor vehicles the defendant asserts that he has three and all these were acquired many years after the separation. Again I hold that the plaintiff would not be entitled to a beneficial interest in all of them.

I uphold the submissions of counsel for the defendant and reject those of counsel of the plaintiff.

The summons is dismissed with costs to the defendant to be agreed or taxed.