

SAINT VINCENT and THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 OF 2003

BETWEEN:

YVONNE ELIZABETH WILLIAMS

Appellant

and

KENNETH SYLVESTER WILLIAMS

Respondent

Before:

His Lordship, the Hon Sir Dennis Byron
His Lordship, the Hon. Justice Adrian Saunders
His Lordship, the Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Perry Joseph for the appellant
Mrs. Kay Bacchus Browne for the Respondent

2003: November 26;
2004: January 12.

JUDGMENT

- [1] **BYRON, CJ.:** The parties married on 15th December 1974. There are no children of the family. They built a matrimonial home in which they cohabited until 3rd July 1984. Since then the husband has been in occupation of the property. The title to the land is in the name of the wife. The court issued a decree absolute of divorce on 21st August 1992.
- [2] The Judge found that there are two other parcels of land registered in the name of the wife. These were acquired in 1989 and 1994 respectively, in each case many years after the effective breakdown of the marriage. He concluded that there is no basis for the

husband's claim to be entitled to any share in either of these properties and declared these to belong to the wife exclusively. There has been no appeal against this finding.

- [3] The other major dispute at the trial concerned a van that had been purchased. The judge found that both parties had had access to the income from it when it was in their hands and as it is no longer available for distribution he would make no orders with reference to it. There has been no appeal against this finding either.
- [4] The only issue in this appeal relates to the matrimonial home. The learned trial Judge had ordered that the wife must execute a deed of conveyance to the husband and he must pay her 1/3 of the value of the property. She has appealed against that decision and contended that she was entitled to the entirety or at least 2/3 of the property.
- [5] The difficulty that existed in this case was that the accounting was unspecific and there was considerable dispute as to facts.
- [6] The husband alleged that he had worked as a seaman and sent her money totaling \$51,800.00 USD and that she used that money to build the matrimonial home and make other investments for which she did not account to him. His affidavit included unsupported details, which did not make mathematical sense. He said that she built the house cheaply for \$34,000.00. She purchased other properties valued at \$113,000.00. She lived luxuriously with two maids, took many holidays abroad, purchased expensive clothes all from his savings which he had sent to her.
- [7] The wife alleged that the money her husband sent her came with specific instructions for disbursement to his mother and father; the opening of a joint bank account in both their names with a standing order for monthly payments to his mother and the payment of school fees for the husband's two brothers. She said that the construction of the matrimonial house was partly financed by loans she took from Barclays Bank, her own savings and money from the joint account. The wife alleged that the matrimonial home was built on land that she owned prior to the marriage.

- [8] The entire case was based on affidavits without supporting documentation. It was clear that it was not possible to make findings of fact as to the respective contributions of the parties to the house. No findings were made as to the purchase of the land and its value, nor as to the exact cost of the construction and to the source of the funds except in very general terms. No attempt was made to determine the value of the husband's exclusive occupation of the matrimonial home and whether this was a matrimonial asset for which he should account. The learned trial judge eventually concluded at page 5 of his judgment;

"...both parties have contributed to the acquisition and/or construction of the matrimonial home, and that the respondent contributed the major share of the resources towards that purpose. I therefore order that the respondent, who has admittedly lived in the said house for many years to the exclusion of the petitioner, must have the property..."

- [9] Both counsel adopted the position that where there was a lack of specificity in the accounting, the principle equity is equality should inform a 50/50 division of the property. Counsel for the husband submitted that such a division would have been appropriate if the entire property was being divided. However, the unchallenged findings of the judge indicated that the other properties acquired by the wife were done so long after the marriage had broken down and that the husband would not have contributed financially towards their acquisition in any event. In addition, in the affidavits the husband indicated that he was a boat owner. This too was not included as part of the matrimonial property.

- [10] We have concluded that the jurisprudence applied by this court requires that the property be split equally because it was undisputed that both had made substantial contributions but neither was able to prove the extent of the said contributions. This exposition of the law may be found in the dictum of Denning LJ in **Rimmer v Rimmer**¹ where he said:

"It seems to me that when the parties, by the joint efforts, save money to buy a house which is intended as a continuing provision for them both, the proper presumption is that the beneficial interest belongs to them both jointly. The property may be bought in the name of the husband alone or in the name of the wife alone, but, nevertheless, if it is bought with money saved by their efforts and it is impossible fairly to distinguish between the efforts of one and the other, the beneficial interest should be presumed to belong to them both jointly."

¹ [1952] 2 All ER 863 at 869

In the circumstances we vary the order of the learned trial judge to the extent that the husband pay the wife half of the value of the property. In the event that the payment is not made within six months the property must be sold and the proceeds divided equally between the husband and the wife.

[11] This was a case where the wife had difficulty obtaining representation. She received consideration from the husband with regard to compliance with time standards and from the Bar Association who provided pro bono assistance at the request of the court. We express our appreciation to all counsel involved.

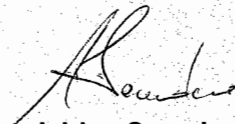
[12] The general rule is that costs follow the event. In the circumstances we would make a reduced order in the appellant's favour in the sum of \$2,500.00.

I concur

I concur



Sir Dennis Byron
Chief Justice



Adrian Saunders
Justice of Appeal



Michael Gordon
Justice of Appeal [Ag.]