

**EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. SVGHMT2014/0096**

**BETWEEN:**

[1] WILLIAM AUGUSTUS BAILEY

Petitioner

and

[1] VELMA AGATHA BAILEY NÉE BROWNE

Respondent

**Before:** The His Lordship the Hon. Justice Brian Cottle High Court Judge

**Appearances:**

Mr. Jaundy Martin for Petitioner

Mr. Jadric Cummings for Respondent

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2024: July 31st  
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**JUDGMENT**

- [1] **COTTLE, B:** The parties were married on 27<sup>th</sup> August 1983. The groom was then 34 years old. The bride was 26. The union was dissolved on 23<sup>rd</sup> March 2015. There is one outstanding matter of ancillary relief to be determined. It concerns a property adjustment order sought by the respondent wife.
- [2] In her affidavit of means the wife swore that she is now retired and has no income save rental income from a property she has recently inherited. She deposes that the parties first lived at

Belair in a property given to the husband by his father (the first parcel). This went on for about 11 years. The parties then constructed a building on an adjoining parcel of land (the second parcel). They moved in about 1994 and resided in the building as the matrimonial home until the marriage ended. The wife says that she contributed to the cost of construction of the house on the second parcel. She says that she applied some \$10,000 in borrowed funds to complete the house. She also purchased furniture for the home. She still resides there. She later expended some \$20,000 to complete the lower storey of the matrimonial home transforming it into a self contained 2-bedroom apartment. The eldest son of the parties now resides there with his family. The petitioner swore that up to very recently both herself and the husband believed that he had title to the second parcel. She now knows that neither the husband nor his father has title to the second parcel on which the matrimonial home has been built. She seeks to have the court direct the parties to do what is needed to have title to the second parcel be vested in her. She makes to claim to the first parcel.

- [3] The husband in his affidavit of means swore that the first parcel is part of the estate of his father. He says that he is retired and has no income. He is also remarried. His new wife takes care of all of his expenses. He swears that the second parcel was a gift to him from his father. He built a house on that parcel before the marriage with no input from the wife. He also swears that he has inherited another parcel of land from his uncle Bentley Bailey. That parcel is at Pilgrim Hill. He says there is no matrimonial property which can be the subject of a property adjustment order.

### **The Submissions**

- [4] Counsel for the wife relies on the Matrimonial Causes Act Cap 239 of the Revised Laws of St. Vincent and the Grenadines 2009. Sections 32 and 33 of that Act empower a court to make property adjustment orders and orders for the sale of property upon the dissolution of a marriage as matters of ancillary relief. In exercising those powers, the court is mandated to act with the aim of placing the parties, so far as is practicable, and having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each party had properly discharged his or her financial obligations and responsibilities towards the other. In this case neither party seeks financial support from the other. They do not have any earning capacity. The income the wife receives is not revealed.

She does say that she has inherited property which she has rented out. The husband says that he too has inherited property. It is not revealed whether he is in receipt of any rental income.

[5] Counsel for the wife says that she has no other place to live except the house she has recently inherited. If she lives in that house she will lose the rental income it generates. As she has no other source of income it is fair to award her the second property while the husband can retain the first property as his own.

[6] Counsel for the husband submits that as the first property remains part of the unadministrated estate of the father of the husband it is not matrimonial property and the court has no power to make a property adjustment order concerning property which does not belong to either party of the marriage. Similarly, he says that the second property does not belong to him. He merely has a spes successionis. Even if he eventually inherits this property the court should not regard it as matrimonial property. Counsel cite the case of *Prime V Prime* GDAHMT 2013/0028 where Mohammed J. Relied on dicta from Lord Nicholls in *White V White* 2000 UKHL 54 at para 42.

“....property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated the same way. Property acquired before marriage and inherited property acquired during the marriage come from a source wholly external to the marriage. In fairness, where this property still exist, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property then he or she may have regarding the matrimonial property.”

[7] The Matrimonial Causes Act requires a court when considering an application for ancillary relief consequent upon the breakdown of a marriage to consider several factors as set out at section 34. Among these factors the court must have regard to the financial resources that either party is likely to have in the foreseeable future. In this case, the husband is likely to have the first and second properties as assets which can either be capitalized or retained to generate rental income. The wife will have the property she has inherited. That too can be capitalized or retained; however I note that this is her only source of income while the husband is fortunate enough to have a new wife who meets all his financial needs.

[8] Having considered all the relevant matters in this case I have concluded that the wife should be allowed to remain living at the second property. She is to have a life interest. This can be achieved easily if the husband takes steps to obtain a grant of letters of administration or grant of probate of the estate of his father as he is the only beneficiary of that estate.

[9]     **Order**

- (1)     The husband shall proceed to obtain a grant of probate or letters of administration to the estate of his father. He shall then transfer a life interest in the second parcel to the wife. He is to take no steps to interfere with the wife's possession of parcel 2.
- (2)     I make no order as to costs.

**Brian Cottle**  
High Court Judge

By The Court

Registrar