

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2013/0327

IN THE MATTER OF A LOT OF LAND AT HERMITAGE IN THE PARISH OF SAINT PATRICK

AND

IN THE MATTER OF ESTATE OF DESMOND BAPTISTE, DECEASED

AND

IN THE MATTER OF PARTITION ACT CAP 225 OF THE 1990 REVISED LAWS OF GRENADA

AND

IN THE MATTER OF THE TRUSTEE ACT CAP 329 OF THE 1990 REVISED LAWS OF GRENADA

BETWEEN:

**GENEVE BAPTISTE
(As Administratrix)
GENEVE BAPTISTE
DENNIS BAPTISTE
RAYMOND BAPTISTE
GARY BAPTISTE
TRACEY AHITAN**

CLAIMANTS

AND

**KAREN BAPTISTE
LEANNE BAPTISTE
(by their next Adrienne Mc Intosh)
NADIA BAPTISTE**

DEFENDANTS

Consolidated with:

CLAIM NO. GDAHCV2014/0001

BETWEEN:

ADRIENNE MC INTOSH

CLAIMANT

AND

GENEVE BAPTISTE
(Administratrix of the Estate of Desmond Baptiste)

DEFENDANT

Appearances:

Mr. Ruggles Ferguson for Adrienne Mc Intosh; Karen Baptiste; Leanne Baptiste and Nadia Baptiste

Mrs. Winnifred Duncan Phillip for Geneve Baptiste; Dennis Baptiste; Raymond Baptiste; Gary Baptiste and Tracey Ahitan

2021: March 9;
March 22.

RULING

- [1] **ACTIE, J.:** This is a consolidation of two claims concerning two properties which form part of the estate of Desmond Baptiste ("the deceased").

Background

- [2] The late Desmond Baptiste was married to the claimant, Geneve Baptiste, in 1961 and had four children namely Dennis Baptiste, Raymond Baptiste, Garry Baptise and Tracey Ahitan. The parties separated and the deceased was in a common law relationship with Adrienne Mc Intosh and had three children, namely Karen Baptiste, Leanne Baptiste and Nadia Baptiste.
- [3] The deceased left two properties, one at Hermitage measuring 1 Rd 34 Pls together with a dwelling home in which the Adrienne Mc Intosh and their two children presently reside and the other at Peggy's Whim measuring 9 acres 2 Rds. The Peggy's Whim property is jointly owned with a half share with his wife, Geneve, as tenants in common.
- [4] In the first claim GDAHCV2013/0327 ("first claim"), Geneve Baptiste as Administratrix of the Desmond Baptiste claims against Adrienne Mc Intosh and her three children seeking possession and sale of the dwelling home and the sale of all properties of the deceased pursuant to the Partition Act and for the proceeds of sale to be divided among the beneficiaries.

- [5] In the second claim GDAHCV2014/0001 (“second claim”) Adrienne Mc Intosh, the common law wife of the deceased, claims for a declaration that she is entitled to a share in the dwelling house and the property where she and her children reside. Ms. Mc Intosh contends that she and the deceased occupied the home from 1996 together with their three children. Ms. Mc Intosh said they farmed the property to plant and depended on the produce and income to sustain themselves. She did all the household chores and maintenance of the children. She said that the deceased suffered a stroke in 2001 and was physically incapacitated until his death in 2007. He was unable to work and contribute towards the household as he himself needed care. Ms Mc Intosh said that she became exclusively responsible for providing for the family and the deceased. She said that the part wood and part wall dwelling house was extensively damaged during hurricane Ivan and was able to be restored through her exclusive efforts in obtaining assistance from the government. She said she painted and substantially improved the value of the said house.

Law and Analysis

- [6] The issue in the first claim involves a dispute between the beneficiaries of the estate of the deceased in relation to the division and occupation of both properties. The second claim concerns whether Adrienne Mc Intosh, the common law wife of the deceased, is entitled to a share of the properties.

First Claim

Beneficiaries of the deceased under the laws of intestacy

- [7] The Law in relation to beneficiaries under the estate of the deceased is simple. **Section 3 of the Status of Children Act¹** provides:

“For all the purposes of the laws of Grenada the distinction known to the law prior to the commencement of this Act between the *status of children born in wedlock and the status of children born out of wedlock is hereby abolished; and the status, rights, privileges and obligations of a child born out of wedlock shall henceforth be identical in all respects with those of a child born in wedlock*; so that *all children* shall, after the commencement of this Act, be of equal status.

¹ Cap 311A of the 2010 Continuous Revised Edition of the Laws of Grenada

A person is the child of his or her natural parents and his or her status as their child is independent of ***whether the child is born in or out of wedlock***." (Bold emphasis mine.)

[8] **Section 4 of the Intestate Estates Act** provides:

"if the intestate leaves a husband or wife and issue, the surviving husband or wife shall be entitled to one-half absolutely and the issue shall be entitled to the remaining half in equal share".

[9] Applying the legislation there is no dispute by the parties that all the children, both from the marital and common law relationship, are equally entitled to a share in the deceased estate. **Under Section 4 of the Intestate Estates Act²**, Geneve Baptiste, wife of the deceased is entitled to half share of the deceased interest and the children are equally entitled to the remaining half share.

[10] The property that is relevant for division in relation to the first claim is the Peggy's Whim property. The deceased and Mrs. Geneve Baptiste both held the Peggy's Whim property jointly as tenants-in-common. Therefore, the portion of the said property in issue for division is the deceased's half share or interest. Therefore, in light of the above division, Mrs. Geneve Baptiste is entitled to a three quarter ($\frac{3}{4}$) share or seventy-five percent (75%) share of the Peggy's Whim property. The children of the deceased are equally entitled to the quarter ($\frac{1}{4}$) or twenty-five (25%) share of Peggy's Whim property.

Second Claim

Whether Ms. Adrienne Mc Intosh is entitled to a share in the property at Hermitage

[11] The second claim concerns whether Ms. Adrienne Mc Intosh, the common law wife is entitled to a share of the Hermitage property. The evidence before the court is that the Hermitage property consists of a piece of land together with building thereon which the deceased inherited from his parents. Under the application of **section 4 of the Intestate Estates Act**, Mrs. Geneve Baptiste, wife of the deceased, is entitled to a one-half share of the property and the remaining half share is to be divided equally among the children of the deceased.

² Cap. 154 of the 2010 Continuous Revised Edition of the Laws of Grenada

[12] However, Ms. Adrienne Mc Intosh led evidence that she moved into the home at Hermitage with the deceased in 1996 and contributed significantly to the improvement of the Hermitage property by painting and facilitating substantial repairs after the passage of Hurricane Ivan in 2004.

[13] Counsel Mr. Fergusson states that Ms. Mc Intosh assertion raises the equitable doctrine of constructive trust. Counsel, Mrs. Winifred Duncan Phillip, relied on the learning from the authority of **Lloyds Bank plc v Rosset**³. Counsel, Mr. Ruggles Ferguson, correctly stated the principles concerning constructive trust and relies on the Learning in **Abbott v Abbott**⁴.

[14] In the Privy Council case of **Abbott v Abbott**, Baroness Hale (as she then was) stated: -

“It is now clear that the constructive trust is generally the more appropriate tool of analysis in most matrimonial cases. As Lord Walker of Gestingthorpe explained in *Stack v Dowden* [2007] UKHL 17, at para 31, [2007] 2 All ER 929, [2007] 2 FCR 280: In a case about beneficial ownership of a *matrimonial or quasi-matrimonial home* (whether registered in the name of one or two legal owners) the resulting trust should not in my opinion operate as a legal presumption, although it may (in an updated form which takes account *of all significant contributions, direct or indirect, in cash or in kind*) *happen to be reflected in the parties' common intention*.⁵” (Bold emphasis mine)

Then at paragraph 19:

“The Court of Appeal appears to have attached undue significance to the dictum of Lord Bridge in *Lloyd's Bank plc v Rosset*, in particular as to what conduct is to be taken into account in quantifying an acknowledged beneficial interest. *The law has indeed moved on since then. The parties' whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to its ownership*”⁶ (Bold emphasis mine)

[15] The court is bound and adopts the learning from Baroness Hale in **Abbott**. The equitable doctrine of constructive trust is not based on whether the parties were married or not or whether the claimant made any direct financial contributions to the property. While there is no direct evidence that the deceased and Ms. Mc Intosh had an expressed common intention to share the property at Hermitage, the common law has indeed moved on and the court is entitled to look at the whole course of dealings between the parties to infer or impute a common intention.

³ [1990] 1 All ER 1111

⁴ [2007] UKPC 53

⁵ Ibid at para 4

⁶ Ibid at para 19

[16] It is Ms. Mc Intosh's evidence that she moved into the home at Hermitage with the deceased in 1996 and had an intimate relationship with the deceased which produced three children. She stated that she took care of the deceased before and after his stroke and provided for the family by reaping crops and produce from the property for the sustenance of the family. She said that she indirectly contributed to the improvement of the property by facilitating the substantial repairs of the dwelling home undertaken by the Government after the passage of Hurricane Ivan. Ms. Mc Intosh said that she painted house after the renovation. It is the evidence that deceased, and his family stayed at Ms. Mc Intosh's sister during the renovation of the building.

[17] Ms. Mc Intosh's efforts to repair the house was substantiated by the witness, Trajan John. He said that the house comprised of board and wall, but the board part was severely damaged during hurricane Ivan in 2004. The only part left standing was the kitchen and the concrete forms in part of the veranda. The Government provided assistance to people whose homes were destroyed by Ivan. Ms. Mc Intosh made considerable efforts in obtaining government's assistance to rebuild the damaged property. He said that Ms. Mc Intosh was with the team throughout the rebuilding process. She worked and assisted in whatever way to help with the actual rebuilding by removing debris and cleaning up to allow the rebuilding. He sates all the bedrooms flooring, windows, and the roof were totally rebuilt.

[18] There is no evidence to contradict Ms. Mc Intosh's assertions. Ms. Geneve Baptiste, who did not testify at trial, led no evidence to deny that Ms. Mc Intosh took care of the deceased after his stroke and the maintenance of the household needs. There was only a bare assertion by Tracey Ahitan that the deceased and Ms. Mc Intosh did not have an intimate relationship for many years.

[19] The court accepts and takes into consideration all the efforts made by Ms. Mc Intosh in rebuilding the extensively damaged dwelling home. The court also takes into consideration that Ms. Mc Intosh contributed significantly to the maintenance of the deceased and her family and even more so during his incapacitation from 2001 until his demise in 2007. In the absence of compelling evidence to the contrary, the court accepts Ms. Mc Intosh's evidence as truth of her contributions to the property at Hermitage. Accordingly, taking all the circumstances of the case, the court is satisfied that a common intention to share the property has been made out by Ms. Mc Intosh and her contributions are to be valued at twenty five percent (25%) of the value of the Hermitage property.

[20] This in effect entitles Geneve Baptiste to half ($\frac{1}{2}$) share of the Hermitage property, Ms. Adrienne Mc Intosh quarter ($\frac{1}{4}$) share and the remaining quarter ($\frac{1}{4}$) share to be shared equally by all the children of the deceased namely: Dennis Baptiste, Raymond Baptiste, Gary Baptiste, Tracey Ahitan, Karen Baptiste, Leanne Baptiste and Nadia Baptiste.

[21] In relation to the first claim, Geneve Baptiste seeks an order for possession and sale of all properties and equal distribution of the proceeds. **Section 8 of the Partition Act** provides the instances where the court may order the sale instead of a partition and reads:

Court to order sale instead of partition.

(1) On a motion for partition, if it appears to the Court that, by reason of the nature of the property to which the motion relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstances, a sale of the property and a distribution of the proceeds would be more beneficial to the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and give all necessary and proper directions consequent thereon.

(2) On a motion for partition, if a party or parties interested individually or collectively to the extent of one moiety or upward in the property to which the motion relates, requests or request the Court to direct a sale of the property and a distribution of the proceeds instead of a division thereof between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale accordingly and may give all necessary and proper directions consequent thereon.

(3) On a motion for partition, if any party interested in the property to which the motion relates requests the Court to direct a sale of the property and a distribution of the proceeds as aforesaid, the Court may, if it thinks fit, unless the other parties interested in the property or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property and give all necessary and proper directions consequent thereon, and in case of such undertaking as aforesaid being given, the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary and proper directions consequent thereon.

[22] In relation to the Peggy's Whim property, the court is of the view that the property measuring in excess of 9 acres is of sufficient equity to allow a partition. With respect to the Hermitage property, the court taking everything in the round, especially in light of Ms. Mc Intosh and her three children entitlement and occupation of the premises, makes it unconscionable to order possession and sale of the property.

[23] The court is of the view that there is sufficient equity in the joint properties to allow for a more equitable distribution of the estate rather than to order a sale and vacant possession of the dwelling house.

[24] The court is of the view that a more equitable distribution of the property would be for the determination of the monetary share value of the children in the Hermitage and Peggy's Whim properties. The Mc Intosh's children may wish to abandon their shares in the Peggy's Whim property in exchange for Geneve's children abandoning their shares in the Hermitage property. This in effect would increase the share entitlement of Ms. Mc Intosh and her children in the Hermitage property which would facilitate a more equitable partition between Geneve Baptiste and Ms. Mc Intosh and her children. However, this can only be achieved after a valuation and the determination of the resultant monetary share value of each co-owner in the two properties.

Conclusion

[25] In light of the foregoing reasons, it is ordered as follows:

First Claim (Claim No. GDAHCV2013/0327)

- (1) The first claim is dismissed, and the reliefs sought are refused.
- (2) The orders for vacant possession and sale of the properties are refused.
- (3) A declaration that Geneve Baptiste is entitled to three-quarter ($\frac{3}{4}$) share of the Peggy's Whim property and the remaining quarter ($\frac{1}{4}$) share of the property is to be shared equally by the children of the deceased namely: Dennis Baptiste, Raymond Baptiste, Gary Baptiste, Tracey Ahitan, Karen Baptiste, Leanne Baptiste and Nadia Baptiste.
- (4) The claimants in the first claim are to pay to the defendants' costs in the sum of \$2,500.00.

Second Claim (Claim No. GDAHCV2014/0001)

- (1) The second claim is granted.
- (2) A Declaration that Adrienne Mc Intosh is entitled to a quarter ($\frac{1}{4}$) share of the property together with building thereon at Hermitage in the parish of Saint Patrick.

- (3) A declaration that Geneve Baptiste is entitled to half share ($\frac{1}{2}$) share in the Hermitage property and the remaining quarter ($\frac{1}{4}$) share of the Hermitage property is to be shared equally by the children of the deceased namely: Dennis Baptiste, Raymond Baptiste, Gary Baptiste, Tracey Ahitan, Karen Baptiste, Leanne Baptiste and Nadia Baptiste.
- (4) Geneve Baptiste is to pay Adrienne Mc Intosh costs in the sum of \$2,500.00.

Agnes Actie
High Court Judge

By the Court




DEPUTY REGISTRAR
SUPREME COURT
OF GRENADA