

EASTERN CARIBBEAN SUPREME COURT

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHMT2014/0090

BETWEEN:

SYLVIA RICHARDS née FRANCOIS

Petitioner

and

HAMILTON RICHARDS

Respondent

Appearances:

Ms Paula David for the Claimant

Mr Cecil Blazer Williams for the Defendant.

2017: March 20, 31

2018: August 15

JUDGMENT

[1] **ROBERTS, J. [Ag.]:** The petitioner and the respondent were married on 11th April 1981 and a decree nisi was granted on 26th September 2014. Following the decree nisi, the petitioner filed a notice of application for ancillary relief on 10th October 2014. In the notice the petitioner applied for the following orders:

- (1) Periodical payments under section 31 (1)(a) and 31 (b) of the Matrimonial Causes Act;

- (2) Lump sum payments under sections 31 (1) (c) of the Matrimonial Causes Act;
- (3) A property adjustment order pursuant to section 32 of the Matrimonial Causes Act;
- (4) An order for sale of property pursuant to section 33 of the Matrimonial Causes Act;

On 2nd October 2015 the application was amended to add a fifth prayer, namely:

“an order for the avoidance of a reviewable disposition pursuant to section 47 (2) (b) of the Matrimonial Causes Act setting aside deed of gift number 2862 of 2011 which purports to transfer title to the matrimonial home at Calder to Jeffwayne Richards subject to the life interest of the respondent”.

- [2] The petitioner supported her claim for ancillary relief by an affidavit sworn on 4th November 2014 and an affidavit of means on 22nd December 2014. The respondent swore to an affidavit in response to the petitioner's affidavit of means on 23rd July 2015. Affidavits in support of the respondent were also sworn by Jeffwayne Richards also known as Jeff Wayne Simon, Carmina Simon and Rosalind Richards.
- [3] The petitioner's case focused mainly on two assets, the dwelling house/wall house and the contribution of both parties to the home. The petitioner admitted in her affidavit of means and under cross examination that the respondent had the land subject of deed of conveyance number 1268 of 1971 and deed of gift number, 2862 of 2011 before she and the respondent had a relationship. She claims that she met him living in a chattel house, and that she helped the respondent to build the wall house.
- [4] A summons was filed on the 2nd October 2015 pursuant to the Matrimonial Causes Rules 1977 (UK) Rules 8 (2) and 122 (1) (b) seeking “an order for the evidence of a reviewable disposition pursuant to section 47 (2) (b) of Matrimonial Causes Act setting aside deed of gift number 2862 of 2011 which purports to transfer title to the matrimonial home to Jeffwayne Richards subject to the life interest of the Respondent.”

- [5] On the other hand, the respondent's case is that the land was purchased by him with the assistance of Carmina Simon. Carmina Simon's name was not placed on the deed of conveyance because as stated under cross examination, he promised to give the land to Jeffwayne Richards also known as Jeff Wayne Simon. Jeffwayne's acts of kindness to the respondent propelled the respondent to formally convey the land to Jeffwayne. The respondent insisted that the petitioner had nothing to do with the construction of the wall house which was on the land.

Contribution to the home

- [6] The evidence of the petitioner is that she was a domestic servant during most of the marriage. During that period she and the respondent had three children. According to petitioner's affidavit sworn on 22nd December 2014, it was she who paid the water and electricity bills and it was only after she got too sick to work that the respondent began paying those bills.
- [7] The petitioner stated that she helped to raise Carmina and Junior, who were not her biological children but were fathered by the respondent. She stated that she did "all the house work in the house". "I cooked, washed, ironed and cleaned for the entire family" (para 9) - that during the marriage she bought most of the groceries for the household; that the respondent only gave her \$40.00- or \$50.00 each month and that she bought the children's school uniforms, bags and books. The petitioner also stated that she used to help the respondent rear his mother's cow and calf when he was in America and also helped him to rear goats and sheep.
- [8] The petitioner indicated that the respondent did not give her any money from the proceeds of his crops, so she sought outside employment. She worked 3 days per week as a house-keeper when she was pregnant with Roxanne. She then worked "full time" for several years with Paula David and Joseph Delves and then with Dr Colin Boyle and Dr Rosemary Boyle.
- [9] With respect to the acquisition of the dwelling house in which the parties lived the petitioner's evidence was that –

"The Respondent had the land on which the matrimonial home sits before I began having a relationship with him. At first there was a board house on the land. I think we

built the concrete house after we got married. The concrete house was certainly not there before the respondent and I became a couple. We built the house together. I helped him to carry sand and blocks while we were building the house. The respondent physically built the house. He paid a man who is called "Big Shot" to help him with the construction".

[10] The respondent for his part in his affidavit of 23rd July 2015 admitted that the petitioner did most of the housework, but that she stopped cooking and washing his clothes "over ten years now". He stated that the petitioner never helped him to cultivate his crops. He stated that the petitioner could not have helped him to rear his cattle when he went to America as he had sold his cattle before he went to America. He denied that he ever reared sheep and he stopped rearing goats long before he went to America. He said that he gave money to the petitioner to buy uniforms, book-bags and books for the children.

[11] The respondent in his affidavit sworn on the 4th November 2014, said that he went on contract to work every year to the USA and sent home money to the petitioner every fortnight; but that he discontinued going on contract because he became ill in the late 1980's. The respondent swore that he was diabetic and hypertensive and had an operation to remove prostate cancer. He deposed that he received public assistance in the amount of \$250.00 per month which he shared with the petitioner who lived in the house with him. He also received money and other assistance from Jeffwayne Richards also known as Jeff Wayne Simon, Junior Richards and Corine Glasgow and he paid the water and electricity bills. Under cross examination the respondent admitted that he planted sweet potatoes and peanuts on lands belonging to his sister. He also admitted that up to the time of giving evidence he went fishing and brought home fish to feed the household.

Evidence and Analysis

[12] I had the opportunity of observing the demeanor of the witnesses in this case. I formed the impression that in her recollection of the history of the marriage and the acquisition of the assets during the marriage, the petitioner was not as lucid as the respondent and his witnesses. For instance, the petitioner seemed uncertain about the sequence of events on her moving into the house. She asserted that she moved into a wooden structure and that she assisted in the construction of a concrete structure. Yet she swore, ". I think we built the concrete house after we

got married. The concrete house was certainly not there before the respondent and I became a couple. We built the house together". The respondent and his witnesses attested that when the petitioner moved into the house it was a 'wall' concrete structure. I accept the evidence of the respondent and his witnesses on this issue.

Findings of Fact

[13] From all the evidence before me I have made the following main findings of facts –

- (1) The petitioner and the respondent were married on 11th April 1981 and a decree nisi was granted on 26th September 2014.
- (2) The petitioner is now 56 years of age and the respondent is 81 years of age.
- (3) The petitioner cohabited with the respondent after the respondent had built the wall house.
- (4) At the time of the marriage the respondent had built a concrete house
- (5) The land on which the house was built was purchased with the assistance of Carmina Simon.
- (6) I am not convinced that the house was transferred to Jeffwayne Richards to deprive the petitioner of her interest in the house as I find that she had acquired no interest in the dwelling house at the time of the conveyance to the respondent's son. I accept the explanation of the respondent as to why the transfer was done – as acknowledgment of the interest that his mother had in the property and recognition for the assistance rendered to the respondent.

(7) The petitioner is 59 years of age and the respondent is 81. Neither the petitioner nor the respondent is working but the respondent goes to sea to provide fish for his family. The respondent receives poor relief of \$250.00 per month.

(8) The petitioner contributed to the household finances when she worked as a domestic helper. Counsel for the respondent submitted that working "full time" as a domestic servant implied a "sleeping in" arrangement. However I am not willing to subscribe to that interpretation of the petitioner's evidence, which could have been tested in cross examination.

(9) The respondent also contributed to the household finances by remitting funds when he worked in the United States as a cane cutter.

(10) The respondent is diabetic and hypertensive and had an operation to remove prostate cancer. The petitioner suffers from clinical depression, mental illness and an enlarged heart.

Application to set aside deed of gift no 2862 of 2011

[14] The petitioner has applied to the court to set aside deed of gift number 2862 of 2011 on the ground that the disposition was made with the object of depriving her of her interest

[15] The court notes its findings that the property was in existence before the marriage and was owned by the respondent before the marriage. I am of the view that the petitioner is not entitled to a share in the property. It may be that Carmina Simon, the mother of Jeffwayne Richards also known as Jeff Wayne Simon, may have had an interest in the property as I accept the evidence that she provided part of the purchase money and was promised that the land would be given to Jeffwayne. However that aspect of the matter does not take the matter any further except that it serves as background to the application.

- [16] I therefore hold that the property in question, the subject of Deed of Gift no 2862 of 2011, does not fall within the purview of section 27 (2) (b) of the Matrimonial Causes Act 1989.

The Law

- [17] Section 34 (1) of the Matrimonial Causes Act 1989 sets out the matters to which the Court is to have regard in deciding how to exercise its powers in relation to financial and property matters in connection with Divorce Proceedings – it states

“It shall be the duty of the Court in deciding whether to exercise its powers under section 31 (1) (a) (b) or (c), 32 or 33 in relation to a party to a marriage and if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say-

- (a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has, or is likely to have in the foreseeable future;
- (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) Any physical or mental disability of either of the parties of the marriage;
- (f) The contribution made by each of the parties to the welfare of the family, including contribution made by looking after the home or caring for the family;
- (g) In the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example a pension) which , by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

And so to exercise those powers as to place the parties, so far as it 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 had properly discharged his or her financial obligations and responsibilities towards the other.”

Applying the law to the facts

- [18] The facts reveal that the respondent cannot physically do the work he used to do. He is hypertensive and diabetic and a prostate cancer survivor. He is nearly 82 years of age. He however plants peanuts and potatoes on his sister's land in relatively small quantities. He receives public assistance in the amount of \$250.00 [per month] which he shares with the Petitioner, and support from a number of his children. His income is thus very small. He has given the land and wall house to his son, Jeffwayne Richards also known as Jeff Wayne Simon retaining a life interest therein. The Respondent's capacity to earn has been severely reduced.
- [19] The respondent currently maintains the household in which the petitioner and two of her sons live with the respondent. The respondent pays the water and electricity bills. There is no doubt that both the petitioner and the respondent contributed to the welfare of the family during the time that their health permitted them so to do. The full burden of domestic expenses is now borne by the respondent. The standard of living enjoyed by the family before the breakdown of the marriage was relatively low. The parties still live together under conditions which may be described as relatively poor.
- [20] This then is clearly a case where the parties are in much the same financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other. The parties still live under the same roof and it would appear that each through age and illness is dependent on their adult children and the state to survive.
- [21] The petitioner's solution appears in her testimony as follows -
- The respondent "built it [the house at Calder] for his outside woman with whom he had 2 children during our marriage. ... he gave Corinne a deed for that house. I don't want that house. I believe it would be best if the respondent goes to live in that house. I want to remain in the matrimonial home".

I do not think that that is a fair request and I will make no such order.

[22] Counsel for the respondent submitted that “The Honourable Court ought to allow the status quo to continue. To grant the reliefs prayed for in the Notice of application for Ancillary relief would lead to the immiseration into abject poverty of the Respondent”. It seems to me that this submission is a fair view of the situation in which the petitioner and respondent find themselves.

Conclusions

[23] Under the circumstances, I have come to the following conclusions -

- (1) The respondent is not in a position to make any periodical payments since it was not disputed that he was on poor relief.
- (2) It follows that there will be no lump sum payment.
- (3) Given my findings of facts in this case, there will be no property adjustment order as prayed or otherwise.
- (4) There will be no order for avoidance of a reviewable disposition pursuant to section 47 (2) (b) of Matrimonial Causes Act setting aside deed of gift number 2862 of 2011.

Order

[24] Under the circumstances, I order as follows:

1. The application for ancillary relief is dismissed.
2. The application to set aside the deed of gift number 2862 of 2011 is also dismissed.
3. In all the circumstances there will be order as to costs.

Sir Clare K. Roberts, QC
High Court Judge (Ag)

By the Court

Registrar