

**THE EASTER CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2002/0204

IN THE MATTER OF THE REGISTERED LAND ACT CAP 374

AND

IN THE MATTER OF THE PARTITION ACT CAP 305

AND

**IN THE MATTER OF AN APPLICATION BY KEITH EDWARDS FOR THE PARTITION OF
THE LANDS JOINTLY OWNED BY HIMSELF AND EUNICE EDWARDS**

BETWEEN:

KEITH EDWARDS

Claimant

and

EUNICE EDWARDS

Defendant

Appearances:

Ms. Eleanor Solomon for the Claimant
Dr. David Dorsett for the Defendant

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2012: May 31
June 7
.....

JUDGMENT

[1] **MICHEL, J.:** The facts and circumstances of this case are not of very recent origin. The parties to the case were husband and wife for 41 years and the parents of 6 adult children at the time that the present proceedings were instituted. On 18th April 2002 the husband, Keith Edwards, instituted these proceedings against his wife, Eunice Edwards, seeking an order for severance and partition in respect of properties owned jointly by them. Mr Edwards filed an affidavit in support of his claim, Mrs Edwards filed an affidavit in opposition, and Mr Edwards then filed an affidavit in reply.

[2] The case came before Mitchell, J. (as he then was) on 3rd December 2002, who - having heard Counsel for the Claimant and Counsel for the Defendant - made an order by consent of the parties severing the joint proprietorship of some of the properties jointly owned by the parties and declaring them to be held by the parties as tenants in common in equal shares. He also ordered that the severed properties be partitioned and that Mr Leslie King, a licensed land surveyor, be appointed to survey the aforesaid properties in order to divide them in such a manner as to create an equitable division between the parties. Mitchell, J. also ordered that a part of one of the jointly-owned properties forming part of Collins Estate be severed from the remainder of the Collins Estate and that the severed part remain in the joint ownership of the parties. One of the jointly-owned properties of the parties (the Five Islands Estate) was not covered by the order and the case was adjourned to 14th March 2003 for further consideration of the application for severance and partition of the joint property still held by the parties. The order gave liberty to either party to make further application to the court.

[3] There is no indication from the ten-year old court file as to what happened on the adjourned date of 14th March 2003, but on 26th March 2003 Mr Edwards filed notice of application (consistent with the liberty to apply provision) seeking an order that the joint proprietorship of the parties in 832 acres of

land in Five Islands (the Five Islands Estate) be severed, that the aforesaid land be held by himself and Mrs Edwards as proprietors in common in equal shares and that the land be valued, surveyed and partitioned between them. Mr Edwards also sought an order that the portion of Collins Estate ordered by Mitchell, J. to remain in their joint ownership be declared to be held by them as proprietors in common in equal shares.

[4] Mr Edwards's application was fixed for hearing on 11th April 2003, but here again there is no indication on the court's file as to what happened on that scheduled hearing date.

[5] There is then a more than eight-year gap in the court's file, because the next document on it is a notice of application filed on 4th November 2011, which seeks the same orders sought in the application filed on 11th April 2003. The application of 4th November 2011 was set down for hearing on 3rd February 2012.

[6] On 16th January 2012, Mrs Edwards filed an application to strike out Mr Edwards's "statement of case". The grounds of Mrs Edwards's application were that –

- "1. The Claimant has brought a claim seeking an order for severance and partition in respect of properties owned jointly by him and the Defendant. Any severance of properties jointly owned by the parties can only occur with the consent of the parties. The matter of parties consenting to severance is not a matter for the court but is a private matter between the parties and the instant proceedings represents an abuse of the process of the court.
2. In any event, the Defendant is not consenting to any severance and hence the relief sought by the Claimant cannot be granted him by the court.

3. In other proceedings between the parties the Court of Appeal held severance of lands that are jointly is only permissible as provided by the Registered Land Act and that such severance can only occur with the presence of consent by the interested parties.
4. No consent order pursuant to the in accordance with the mandatory requirements of CPR 2000 r. 42.7(1)(c) has been entered in the instant matter and accordingly any order purporting to be entered by consent and in want of the mandatory requirements of CPR 2000 r. 42.7 (1) (c) is struck with sterility.
5. The Respondent-Claimant in his application of 4th November 2011 for severance of the lands at Five Islands has failed to disclose that on 19th June 2003 he and the Applicant-Defendant entered into an agreement not to sever the said lands. In the circumstances the instant proceedings is an abuse of the process of the court.
6. The statement of case brought by the Claimant does not disclose any reasonable ground for bringing the claim.”

[7] Mrs Edwards’s application was also set down for hearing on 3rd February 2012.

[8] When the applications came up for hearing on 3rd February 2012, the hearing was adjourned to 17th May and then to 1st June 2012.

[9] At the hearing, there were detailed oral submissions by Counsel on behalf of the parties, supplementing the written submissions filed on behalf of the parties on 24th May and 29th May

2012. Several affidavits and numerous exhibits had been filed by the parties in the course of the more than twelve-year passage of this case through the courts, all of which were in play in the applications before the Court.

[10] Learned Counsel for Mrs Edwards, Dr David Dorsett, based his oral submissions on two main planks. Firstly, that section 101 (1) (a) of **the Registered Land Act**, Cap. 374 of the Laws of Antigua and Barbuda (the Act) provides that no proprietor of land held in joint proprietorship is entitled to any separate share in the land and, consequently, dispositions of the land may only be made by all of the joint proprietors. He submitted that this provision means that it is not open to the Court to order the severing of joint proprietorship of any land because this would, in effect, constitute a disposition made by one of the joint proprietors. Dr Dorsett cited the judgment of the Court of Appeal in the case of **Edwards v Edwards**¹ - a case involving the parties to the present case – as authority for his submission. The second main plank of Dr Dorsett's submission is that the Order of 3rd December 2002 is a consent order which is not in accordance with Rule 42.7 (1) of the Civil Procedure Rules 2000 (the CPR) and is therefore invalid.

[11] Dr Dorsett urged the Court to grant Mrs Edwards's application and to dismiss the application of Mr Edwards.

[12] In her written and oral submissions, Learned Counsel for Mr Edwards, Ms Eleanor Solomon, disputed the interpretation of section 101 (1) (a) of the Act and of the decision of the Court of Appeal in **Edwards v Edwards**¹ proffered by Dr Dorsett. Ms Solomon submitted that section 101 (1) (a) of the Act prohibits dispositions of land held in joint proprietorship by only one of the joint

¹Antigua and Barbuda Civil Appeal No. 15 of 2005

proprietors, but it does not prohibit the application for or the making of an order by the Court for the severance of joint proprietorship, and that the subsection was never intended to oust the jurisdiction of the High Court in granting relief to the parties to a land dispute. She also submitted that what the Court of Appeal decided in **Edwards v Edwards**¹ was that an attempt by one joint proprietor to make a disposition on his own, severing the joint proprietorship of land held jointly by him and another person, is not permissible.

[13] On the issue of the so-called consent order, Ms Solomon submitted that the order was not pronounced against by the Court of Appeal; it has been acted on by the parties; it was never appealed; and it is a valid and binding order.

[14] Ms Solomon urged the Court to grant Mr Edwards's application and to dismiss the application of Mrs Edwards.

[15] Reading through the several affidavits sworn to by the parties to this case, the picture which emerges is one of a man who appeared to have gone into various business ventures, worked hard, was successful and, in the process, acquired several valuable properties. Throughout most of his journey, he was partnered by his wife.

[16] In 1994, after 33 years of marriage, the parties separated and Mr Edwards moved out of the matrimonial home located on an 832-acre multimillion-dollar estate in Five Islands and took refuge in the former matrimonial home which had previously been converted into a storeroom and was subsequently partially restored to a dwelling place for Mr Edwards.

[17] By the time that Mr Edwards filed the present case in 2002, he had been separated from his wife for 8 years and had fallen into significant debt, which motivated him to seek severance of the joint proprietorship of several valuable properties held by him and his wife in order that he could sell property to pay debts. Some jointly-owned property was severed by order of Mitchell, J. in December 2002 and was surveyed and partitioned, and Mr Edwards appeared to have sold some or all of his shares in the partitioned property. The jewel in the family crown, however, the 832-acre Five Islands Estate (reportedly valued at approximately \$100,000,000) on which sits the matrimonial home of the parties, remains in the joint ownership of the parties, but occupied exclusively since 1994 by Mrs Edwards.

[18] By the time that Mr Edwards had filed his application on 4th November 2011 seeking severance of the parties' joint proprietorship of Five Islands Estate and its partition, he was deep in debt, with several judgments against him and at least one application to commit him to prison for contempt of court for not satisfying a judgment debt when he had the means to do so.

[19] Mr Edwards now apparently faces business collapse, financial ruin, personal disgrace and possible imprisonment unless he can satisfy several debts due by him to several creditors, some of whom have obtained judgments against him and some of whom have sought or are seeking to enforce their judgments by committal proceedings. Meanwhile, various attempts at digging himself out of the deep hole of debt with the involvement of Mrs Edwards have all come to nought in the 10 years since these proceedings were instituted.

[20] Mrs Edwards, who is (at least between herself and her former husband) the sole occupant and beneficiary at present of the hundred million dollar crown jewel, insists that the status quo should

continue, and she calls in aid of her position an unstamped and unregistered agreement signed by her and Mr Edwards in June 2003, under the terms of which both parties undertook not to sever or attempt to sever during the remainder of their natural lives the Five Islands Estate and the remainder of Collins Estate jointly held by them. The agreement, apart from its other legal defects, is analogous to an agreement entered into by an obviously-incompatible married couple never to terminate their marriage and, 9 years later, one of the spouses is attempting to hold the other to the agreement not to terminate the marriage when the marriage is obviously at an end and the other spouse is being ruined by its subsistence.

[21] Applying the relevant law to the material facts, I am of the view that section 101 (1) (a) of the Act only prohibits one joint proprietor from making any disposition of the jointly-owned property without the other joint proprietor(s), but it does not oust the power of the Court to grant relief to a property owner imprisoned by the joint proprietorship of his property with his former wife who may have a vested interest in the maintenance of the status quo.

[22] The Court of Appeal of the Eastern Caribbean Supreme Court in **Edwards v Edwards**¹ held that a consent order entered into by one joint proprietor to sell his share in jointly-owned property without the consent of the other joint proprietor is a disposition made by only one joint proprietor of property jointly owned and is prohibited by section 101 (1) (a) of the Act. The judgment in that case followed a similar judgment of the Court of Appeal of the Cayman Islands in the case of **Mums Incorporated v Cayman Capital Trust**² where it was held that an application made by a corporation for an order for sale of the interest of one joint proprietor in jointly-owned property

²(2000) CILR 131

without the consent of the other joint proprietor was prohibited by the Caymanian equivalent of section 101 (1) (a) of the Act.

[23] These two cases are highly distinguishable from the case at bench, which concerns an application made to the High Court by one joint proprietor of a very substantial and valuable piece of real estate held in joint proprietorship with his former wife (who is in exclusive occupation of the property and desires to maintain the status quo) and in which case the husband urges the Court to end the tyranny of co-ownership which is oppressing him and subjecting him to financial ruin and personal disgrace.

[24] Although I do not regard the character of the order made by Mitchell, J. on 3rd December 2002 (which has subsisted for nearly nine years with no appeal against it, no application made to set it aside and which has in fact been implemented by the parties) as being material to the applications before the Court at this time, I will nonetheless address it out of respect for Counsel who made submissions on it and because that order (together with the order in the present case) will bring this ageing ten-year old case to an end.

[25] The order of Mitchell, J. made in this case on 3rd December 2002 and entered on 4th December 2002 complies fully with all of the requirements of Rule 42.4 of the CPR and is therefore a valid court order. The fact that the terms of the order were agreed to by the disputing parties and that the order is therefore stated to have been by consent, does not transition it from being an order made under Rule 42.4 to a consent order made under Rule 42.7. In any event, the order could not be a consent order under Rule 42.7, because sub-rule (3) of Rule 42.7 enumerates the kinds of

cases to which Rule 42.7 apply, and an order involving land matters, like the severing of joint proprietorship and/or the partitioning of jointly-owned property, could not be made under Rule 42.7.

[26] Of course, the last word on a subject matter of judicial interpretation and understanding could hardly be spoken without hearing from the indefatigable Lord Denning. On this issue, Lord Denning had his say in the case of **Siebe Gorman & Co Ltd v Pneupac Ltd**³ in which he advanced two distinct meanings of the words "by consent" in a court order. The first meaning, according to Lord Denning, is where the words in the order are evidence of a "real contract between the parties" and the second is where the words merely mean that the parties do not object to the terms of the order, in which case a "liberty to apply" clause is normally included in the order. A liberty to apply clause was included in the order of Mitchell, J. in the present case

[27] All things considered, I arrive at the following conclusions –

1. Section 101 (1) (a) of the **Registered Land Act** of Antigua and Barbuda prohibits dispositions by one or more co-owner or co-owners of land held in joint proprietorship without the consent of the other co-owner or co-owners.
2. The judgment of the Court of Appeal in the case of **Eunice Edwards v Keith Edwards and Njards As**¹ is authority for the proposition that an attempt by one joint proprietor to make a disposition of his share in land held in joint proprietorship without the consent of the other joint proprietor will not be sanctioned by the court.
3. The jurisdiction of the High Court to make an order liberating one co-owner of land from the

³[1982] 1 ALL ER 377

bondage of co-ownership with another co-owner with whom he no longer has unity of interest (in any sense of that term) is not circumscribed by section 101 (1) (a) of **the Registered Land Act** or the judgment of the Court of Appeal in **Edwards v Edwards**¹.

4. The jurisdiction of the High Court is also not circumscribed by an unstamped and unregistered agreement purporting to affect interests in registered land and which agreement was in any event premised on the happening of an event or events which has/have not happened and is/are not now likely to happen.
5. Justice, equity and good conscience demand the release of the Claimant in this case from the bondage not only of his current co-ownership of property with his former spouse, but so too from the bondage of debt which threatens to suffocate and destroy him whilst he is the co-owner of property the value of his interest in which probably dwarfs the debt which threatens to suffocate and destroy him.
6. If statutory authority was necessary to grant to the Claimant the relief which he seeks and deserves, then section 161 of **the Registered Land Act** and sections 4 and 5 of **the Partition Act**, Cap. 305 provide the Court with the statutory authority.

[28] My Order is as follows:

1. The Defendant's application to strike out the Claimant's case is dismissed.
2. The joint proprietorship of the Claimant and the Defendant in the lands described in the Schedule hereto is hereby severed and the lands shall accordingly be held by the Claimant and the Defendant as proprietors in common in equal shares.

3. Mr Leslie King, licensed land surveyor, is appointed to survey and value or to complete the survey and valuation of the lands described in the Schedule for the purpose of partitioning them between the Claimant and the Defendant in equal shares.
4. The lands described in the Schedule shall be partitioned within one month of the presentation to the parties of the completed survey and valuation.
5. The costs of the survey, valuation and partition of the lands shall be borne equally by the Claimant and the Defendant.
6. Costs to the Claimant to be agreed or otherwise assessed.
7. If the parties shall fail to agree on costs within 14 days of the date of this Order, then the parties shall each file a submission within 28 days of the making of this Order on the quantum of costs to be paid to the Claimant by the Defendant, on the basis of which submissions the Court shall make an assessment.

SCHEDULE

1. Three parcels of land described as Parcels 1, 2 and 3 of Block 54 1290A in Five Islands Registration Section, consisting of 832 acres of land with a dwelling house and other buildings thereon
2. A parcel of land consisting of 10 acres, together with the old estate house and ruins situated thereon, severed or to be severed from Collins Estate in the Parish of St. Phillip's

and now or formerly forming part of Parcel 1 of Block 25 2886A in St. Phillips North
Registration Section



Mario Michel
High Court Judge