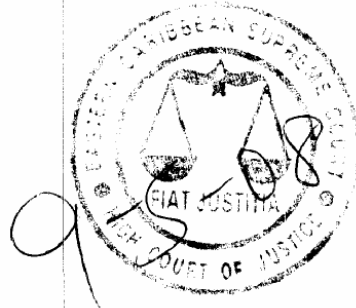


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 51 OF 2006



BETWEEN:

GWENETH SHALLOW

Claimant

V

CARMINA WILLIAMS

Defendant

Appearances:

Mr. S. Williams for the Claimant
Mr. O. Dennie for the Defendant

2008: February 29;
April 7;
May 9.

JUDGMENT

[1] **MATTHEW J (Ag):** On February 9, 2006 the Claimant filed a statement of claim in which she asked for the following relief:

- (a) A declaration that the matrimonial home, the subject matter of deed number 408 of 2006, was jointly owned by the Claimant and her deceased husband, Clayton Shallow.
- (b) A declaration that the Claimant was entitled to a one half share and/or interest in the matrimonial home.
- (c) An order cancelling deed of gift No. 408 of 2006.
- (d) An order that the Registrar of the Supreme Court convey to the Claimant a one half share and/or interest in the subject matter of deed No. 408 of 2006.
- (e) Alternatively, that the said property be sold and the Claimant be paid one half of the proceeds of sale;

- (f) Such further and/or other relief; and
- (g) Costs.

PLEADINGS:

- [2] In the statement of claim the Claimant stated that herself and Clayton Shallow first had a common law relationship and lived together at Coulls Hill and there are two children from that association, namely:
 - Jennifer, born on September 17, 1960; and
 - Lynda, born on January 3, 1962.
- [3] The Deceased migrated to England in 1962 and the Claimant joined him in 1990 and they got married on August 29, 1990.
- [4] She stated that they pooled their resources while in England and a dwelling house was bought at Fountain in Saint Vincent with their joint savings but the deed of conveyance, No. 363 of 1995, was put in the name of the Deceased alone.
- [5] The Deceased retired in 1996 and returned to St. Vincent while the Claimant, aged 61, is an auxiliary nurse and remained in England since her retiring age was 65.
- [6] She stated that she came to St. Vincent every year and visited the Deceased and in June 2005 she visited the Deceased and returned to England on July 22, 2005.
- [7] She said when she visited the Deceased in 1998 she met the Defendant in the matrimonial home at Fountain and thereafter the relationship between herself and the Deceased became strained resulting in her staying at the house of her son at Redemption Sharpes whenever she came to St. Vincent.

- [8] She said she visited St. Vincent from 1998 to 2005 and during that period herself and her husband corresponded with each other and she would send things from England to the Deceased.
- [9] She stated that the Defendant lived just above the property at Fountain and she habitually visited the Deceased and when she came from England in June 2005 she met the Defendant living at the home with the Deceased.
- [10] She said the Deceased suffered a stroke in September 2004 and the Defendant moved in the matrimonial home thereafter. The Deceased died on January 17, 2006.
- [11] She said the Deceased had an account with over \$18,000 and in January 2006, shortly before the death of the Deceased, the Defendant's name was added to the account.
- [12] The Claimant and the Deceased were divorced on December 3, 2005.
- [13] The Defendant by her solicitor filed an acknowledgment of service on February 15, 2006 and a lengthy defence on March 6, 2006.
- [14] In her defence the Defendant stated that a few years after the Deceased got to England he got married to his first wife, a Trinidadian called Gloria Shallow, and that marriage produced two children.
- [15] She stated that the Deceased and his first wife pooled their resources and purchased a property at Wokingham Road in the County of Berkshire, England before they were divorced in or about 1967 and when the second child attained 18 years the Deceased purchased his wife's share of the property and became the absolute owner.
- [16] The Deceased later married a Barbadian called Mary Shallow and that marriage lasted 12 years before his second divorce.

- [17] The Defendant admitted that the Claimant joined the Deceased in England in 1990 but by that time the Claimant had made three other children for another man.
- [18] The Defendant admits that the Claimant became the Deceased's third wife on August 29, 1990 and after the marriage they lived together in the property which the Deceased had clearly owned long before the Claimant came to England.
- [19] The Defendant stated that the third marriage lasted for only five years and she denied that the Claimant and the Deceased had pooled their resources together. She stated that the parties were separated since 1995.
- [20] She stated that the Deceased having worked in England for 33 years sold his own property and from the proceeds of sale, and not from any joint savings with the Claimant, he purchased the dwelling house at Fountain for \$150,000 which is the consideration on deed 363 of 1995 for 7,392 square feet of land.
- [21] The Defendant states that deed 363 of 1995 was put only in the name of the Deceased for it was his sole property and the Claimant made no financial contribution whatsoever to the purchase. She stated that the relationship between the Deceased and the Claimant were strained since 1995.
- [22] The Defendant alleged that the Claimant was aware that divorce proceedings were instituted against her but she never applied for any ancillary relief or property adjustment order and is therefore estopped from claiming a share in the said property.
- [23] It must be noted that the gift from the Deceased to the Defendant was made on October 7, 2005 according to deed No. 408 of 2006, so the property was disposed of before the divorce became absolute on December 3, 2005. The Claimant filed her suit on February 9, 2006.

[24] A case management order was made in respect of this suit on November 27, 2006 and a trial date was fixed for July 13, 2007. The first hearing date took place about seven months later.

ORAL EVIDENCE:

[25] Gweneth Shallow gave evidence and called her daughter, Jennifer Woods, as her only witness. The Defendant gave evidence and called the Deceased's brother, Curtis Shallow, as her only witness.

[26] The Claimant signed a witness summary on February 8, 2006 and its contents are similar to what is in the statement of claim. This serves to show that the statement of claim was more than a pleading and contained matters which should really be evidence.

[27] When she was cross-examined she admitted that she made three other children for another man when the Deceased left St. Vincent to go to England in 1962.

[28] She stated after herself and the Deceased got married in 1990 they lived at 92 Debauville Road in England in her husband's house. She said he had already owned it when she went to England and she made no contribution to the purchase of the house.

[29] She stated that he sold the house and after that he bought the house in Fountain with funds belonging to both of them. She did not know for how much he sold the house in England or for how much he bought the house in Saint Vincent.

[30] She said she and her husband had a joint savings in Barclays Bank, but she did not know how much was in that account. She said when she worked her money went directly to that account and when she needed money she went to the account yet she did not know how much was in the account.

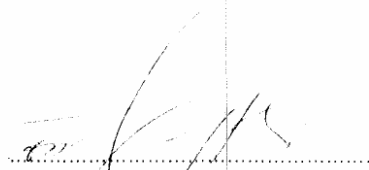
- [31] She said her husband retired to Saint Vincent in 1996 and she came home to Saint Vincent in 1997, 1998, 1999, 2000 and 2001; but on none of these occasions she stayed at the house at Fountain. She said she stayed in the house in 2003 for 4 weeks. She said she and Verlyn Richards stayed in the house.
- [32] That last statement must be contrasted with the statement of claim and her witness summary where she said in 1998 when she came to Saint Vincent she met a woman in the matrimonial home and thereafter the relationship between herself and her husband became strained.
- [33] She said she came to know Curtis Shallow, her husband's brother, when she went to England. She said she did not own any property in England or in Saint Vincent.
- [34] When she was re-examined she stated that her husband was sick before he died. He had a stroke and could not help himself. She said she came down on several occasions but did not feel to stay at Fountain with him.
- [35] The evidence of Jennifer Woods is hearsay. She has never been to England yet in her witness statement she stated that her parents owned a house in England.
- [36] In her witness statement the Defendant stated that Clayton Shallow had prostate surgery and as a result she moved in with him to take care of him.
- [37] Much of her testimony is what the Deceased may have told her and already stated in her defence. She said the Deceased was sick when he went through the divorce and he transferred the property to her before he got the divorce.
- [38] She stated she had been living with the Deceased from 2001. She said she was not aware that the Claimant sent things to the Deceased.

- [39] Curtis Shallow said he migrated to England in 1960 and returned to Saint Vincent permanently in 1994. He said he sent for his brother, Clayton, in 1962 and they lived very close while in England.
- [40] He spoke of Clayton's two earlier marriages and then said he got married to the Claimant in 1990 and that the marriage hardly lasted 5 years. He said in the year of the divorce, namely 2005, the Claimant and her brother had been living separate and apart from each other for over 10 years. He said he visited his brother regularly while in England.
- [41] Curtis was the person who purchased the property at Fountain for the Deceased and he spoke of the care given to him by the Defendant when he was quite ill.

CONCLUSIONS:

- [42] I have no doubt whatsoever that the Claimant did not make any contribution towards the acquisition of the house at 92 Debauville Road in England. Under cross-examination she agreed that when she went to England and met the Deceased he already had his house and was retired.
- [43] Neither do I have any doubt that the Claimant did not pool resources with the Deceased to purchase the house at Fountain in Saint Vincent. She spoke of a joint account at Barclays but she had no idea of the amount in it though she was supposed to have gone to withdraw money from that account when she needed.
- [44] I find that the Claimant made no contribution to the purchase of the house at Fountain.
- [45] The Parties were married in 1990 and became divorced after a period of 15 years in 2005. But that does not appear to have been a good marriage and I believe Justice of the Peace, Curtis Shallow, that the marriage hardly lasted 5 years.

- [46] But it does not follow that because she made no direct contribution to the purchase of the house at Fountain that is an end of the matter and the Defendant should retain her gift absolutely.
- [47] A wife is not like a piece of furniture that after its use for a while may simply be put away; and it appears to me that learned Counsel for the Defendant is not of that view.
- [48] Counsel did not invent the term "property adjustment order" when he stated in his submission that the Claimant "made no application to this Court for a property adjustment order with respect to the said property."
- [49] Property adjustment orders and other financial relief for Parties to a Marriage are dealt with under Part III of the Matrimonial Causes Act, Chapter 176, of the Revised Laws of Saint Vincent and the Grenadines and on the principles laid down in the several decided cases under this branch of the law. I accept the authority of Trippas v Trippas 1973 2 All ER 1 CA. I think the Claimant should be entitled to a one third share of the value of the Fountain property as of the date of purchase.
- [50] I order the Defendant to pay the Claimant \$50,000; or in the alternative that the property be sold and after expenses are deducted the Claimant gets one third of the proceeds and the Defendant to get two-thirds of the proceeds. The Defendant is to pay the Claimant's costs in the amount of \$3,000.00.


Albert N.J. Matthew
HIGH COURT JUDGE (Ag.)