

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 100 OF 2001

**IN THE MATTER OF THE PETITION OF AGNES WHITE nee ST. HILLAIRE
FOR THE DISSOLUTION OF MARRIAGE**

BETWEEN:

AGNES WHITE nee ST. HILLAIRE

Petitioner

V

ULRIC WHITE

Respondent

Appearances:

Mr. R. Marks for the Petitioner

Mr. O. Dennie for the Respondent

2007: August 31

JUDGMENT

[1] The parties were married in 1975. The union was dissolved by divorce in 2001. This is an application by the Respondent husband for ancillary relief. He seeks only a property adjustment order in regard to 4,074 square feet of land at McKies Hill on which a dwelling house stands.

[2] The title to the real estate is in the Petitioner wife. She acquired it by deed of gift from her sister in 1996. The dwelling house is a one and one-half storey structure containing 7 bedrooms. There are also two other small buildings on the land. One is incomplete and the other serves as the laundry.

- [3] Franklyn Browne was a valuer jointly instructed by the parties. He valued the land at \$61,110 and the buildings and external works approximately \$330,000.
- [4] The Applicant husband seeks to be awarded a share of the real property. He bases his claim on his averment that the land was in fact jointly purchased by the parties. He says they paid the sister of the Petitioner \$30,000 for the land. He explains the conveyance in the name of the Petitioner only by saying that this was a device to avoid payment of stamp duty which normally attaches to transfer of land inter vivos. Deeds of gift between close family members are exempt from payment of the stamp duty which would otherwise be at the rate of 10% of the purchase price.
- [5] The Respondent says that the advice to employ this artifice to avoid paying the stamp duty came from the legal advisor of the Petitioner and he had no independent advice. He bolsters his version by exhibiting deed 4131 of 1996. This is a mortgage of the land to the St. Vincent Co-operative Bank to secure a loan of \$30,000. The parties are joint mortgagors. The Respondent says that it is this \$30,000 that was used to pay the Petitioner's sister for the land at McKies Hill.
- [6] The Petitioner denies this. She says that the purpose of the loan was to stock a boutique with a view to setting up a business. She says that apart from \$1,500 paid by the Respondent she repaid the loan in full with the assistance of her son Alberto White. The Respondent also swears that he contributed to the construction of the matrimonial home. He says that the Petitioner applied \$15,000 from the sale of certain property inherited by the Respondent towards the construction of the matrimonial home. He says that he worked in the United States of America for two or three months in 1999 and purchased windows, doors, plumbing and lighting fixtures for the house. He also contributed his earnings from his wrought iron work in St. Vincent to the construction of the matrimonial home.

- [7] The Petitioner denies that the Respondent contributed. She paints a picture of a husband who failed to adequately support his family. One son Alberto White also gave evidence. He too says that the contribution of the Respondent to building of the house was minimal. According to Alberto his father contributed 6 or 7 windows and one metal door from Miami. He made no other contribution.
- [8] I find it significant that the mortgage loans of 1999 and 2002 which financed the construction of the house were in the joint names of Agnes and Alberto White. It is the Petitioner and her son who approached the lending institutions on the security of the land owned by the Petitioner.
- [9] Having seen and heard the parties I prefer the evidence of the Petitioner. I agree that the contribution by the Respondent was not significant enough to warrant me concluding that the parties intended him to acquire a share in the property thereby. In fact in his initial affidavit the Respondent makes no mention of any contribution to the construction of the house. He then based his application only on the ground that the land had been jointly purchased.
- [10] I turn to examine the Respondent's claim that he contributed to the purchase of the land on which the house was built. He now says that the conveyance of the land in the name of the Petitioner only was a fraudulent device to avoid paying the public revenue the stamp duty.
- [11] If this is so then he was a knowing participant in the scheme. He finds himself now hoist on his own petard. In those circumstances this court will not allow itself to be used to relieve him of the consequences of his own conduct. Persons who knowingly embark on devices such as those used in this instance must suffer any adverse effects that occur.

[12] I thus decline to make the requested property adjustment order. The application by the Respondent is refused and the Respondent must pay the costs of this application to the Petitioner. I assess those costs at \$5,000.00.

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Brian S. Cottle
HIGH COURT JUDGE