

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 556 OF 1999

BETWEEN:

ERROL CYRIL DE NOBRIGA

Petitioner

v

DEBORAH MARILYN DE NOBRIGA

Respondent

Appearances:

Mr. G. Grahame Bollers for the Petitioner

Mr. Samuel Commissiong for the Respondent

2004: December 20

2006: April 27

JUDGMENT

- [1] BRUCE-LYLE, J: The Petitioner and the Respondent were married on the 27th December 1975 and lived in Canada for the most part of the marriage. Both the Petitioner and the Respondent have two children together. Jiselle aged 27 and Melissa aged 22 at the time of the hearing of this matter.
- [2] The Petitioner and the Respondent returned to Saint Vincent and the Grenadines in 1993, and on the 19th November 1999, the Petitioner presented a petition to the High Court to dissolve their marriage. On the 27th June 2000, the Petitioner obtained a decree absolute dissolving the marriage which had lasted approximately 25 years.
- [3] Prior to their return to Saint Vincent and the Grenadines, both parties lived and worked in Canada for approximately 20 years. The family's earnings were deposited into a joint bank

account which was controlled by the Respondent. These earnings were supplemented to a considerable extent by monetary gifts from the Respondent's parents who owned a number of supermarket businesses in Saint Vincent and the Grenadines.

[4] It is clear that during their time in Canada, the Petitioner even though trying to perform his obligations as the head of the family encountered difficulties with certain enterprises he engaged in and this necessitated the Respondent's parents, her father especially, to dole out monetary gifts to the Respondent ostensibly to keep them away from fatal financial collapse. For example, the Respondent's father bankrolled a bakery business which he himself had advised the Petitioner against. That bakery business crashed within a short time necessitating the Respondent to seek employment to put bread on the table. It is true that her employment in Canada was not as stable as the Petitioner. The Petitioner at one was employed earning a salary of between \$80,000 to \$90,000 Canadian dollars. The Respondent when employed earned in the vicinity of \$25,000 annually.

[5] The principal assets of the marriage are essentially

- (a) the matrimonial home situate at Golden Vale in the State of Saint Vincent and the Grenadines and which is registered in the joint names of the Petitioner and the Respondent and its contents and
- (b) the Respondent shares in
 - (i) St. Vincent Brewery Limited valued at \$45,290
 - (ii) Shares in C.K. Greaves and Company Limited valued at \$26,023 and 411 shares in Greaves Investments Limited valued at \$10,928.

[6] At the onset of the hearing in Chambers Learned Counsel for the Petitioner Mr. Grahame Bollers informed the Court that the Petitioner would only be seeking an interest in the matrimonial home and its contents, and that they would not be seeking any other financial claims on the property. Learned Counsel for the Respondent Mr. Samuel Commissiong contended that affidavits had been filed by both parties in the matter, and there was therefore a need to ascertain by way of cross-examination who was the more credible of the parties. Evidence was therefore heard from both Petitioner and the Respondent.

- [7] Submissions (written), presented by both counsel in this matter dwelt solely on the issue of division of the matrimonial home and its contents as that to my mind was the only issue to be determined. Who gets what, and in what percentage?
- [8] It is quite pertinent to state at this juncture that pursuant to an order of Justice Ian Mitchell Q.C. as he then was, the said matrimonial home was valued by valuers for both the Petitioner and the Respondent for the purpose of assessing its value. The Petitioner's valuers, Consulting Engineers Inc valued the property at \$826,860 Eastern Caribbean Dollars (E.C.) and a copy of which was exhibited as Exhibit E.D. 1 and attached to the Petitioner's affidavit of 1st March 2002. The Respondent's valuator Mr. Richard Joachim valued the matrimonial home at \$890,000 E.C. It is therefore pellucidly clear that there is not much difference in the two valuations. In striking a median between the two valuations I would put the value of the matrimonial home at \$855,000.00 E.C.
- [9] The main issue therefore, as stated earlier in this judgment is for me to determine whether the Petitioner is entitled to a half-share in both the matrimonial home and its contents, bearing in mind –
- (a) that the matrimonial home was in the joint names of both parties
 - (b) that the Respondent's father had made several significant monetary gifts to the parties through the Respondent and had even had his home in Canada sold and the proceeds ploughed into the construction of the said matrimonial home.

HISTORY OF THE MARRIAGE

- [10] Having lived in Canada from the 27th December 1975 when they married, the parties came to Saint Vincent and the Grenadines in 1993. In 1998 the Petitioner walked out of the matrimonial home, resigned his job as a manager of the Wholesale Division of C.K. Greaves and Co Ltd and has not been permanently employed ever since. In 1999 he filed a petition for divorce claiming as his ground the unreasonable behaviour of the

Respondent under Section 9(2)(b) of the Matrimonial Cause Act Cap 176 of the Laws of Saint Vincent and the Grenadines.

- [11] The Respondent accepts that the marriage had broken down, and she too alleged that the Petitioner too was unreasonable in his behaviour. The burden of her complaint is that the Petitioner has never come to grips with his responsibility as father and husband, and that he spends money carelessly and that her parents, which is not denied, with considerable assets in the supermarket business, have been subsidizing her marriage from its outset.
- [12] On the 13th April 2000, the High Court granted a decree nisi to the Petitioner upon an uncontested hearing, and on 7th June 2001, the decree absolute was issued by the same court. The marriage is now dissolved and the parties therefore ask the court to apportion their respective share in the matrimonial home.
- [13] It is interesting to note that apart from all the times the Respondent's father bailed them out financially whilst they were in Canada, the same father came to their rescue again when he purchased a portion of land at Golden Vale on which the matrimonial home was to be built. The land was put in their joint names. Whether it was the Petitioner who actually chose the portion of land is neither here nor there. The Respondent's father paid for the land. The Petitioner argues strenuously that the fact that the land was put in their joint names is an indication that the Respondent's father had intended to benefit from him and the Respondent equally, so he claims a joint half share in the land. The Respondent on the other hand contends that mindful of the need to educate her children, she had suggested to the father that the Petitioner's name should be put to the deed, not as an intention to make him a gift, but that the whole purpose of including his name in the deed was to put themselves in a position to borrow money on the matrimonial home to finance their children's education. She further contends that there is no evidence that the Respondent's father ever made any declarations to benefit his daughter and the Petitioner equally.

- [14] The cases of Wilson v Wilson [1963] 2 ALL ER 447 and Petit v Petit [1969] 2 ALL ER 385 deal with this issue. In the Petit case Lord Upjohn had this to say at page 407:

“In the absence of all evidence, if a husband puts property into his wife’s name he intends it to be a gift to her but if he puts it into joint names then (in the absence of all other evidence) the presumption is the same as a joint beneficiary tenancy...”

The conveyance of the matrimonial property in this instant case, is in the joint names of the Petitioner and the Respondent. It seems to me that the legal effect of the conveyance in the joint names was to give both parties a share in the property, but I will not agree that it should be equal shares. In matrimonial cases each one is determined on its own merits having regard to certain factors.

- [15] Section 34 of the Matrimonial Causes Act enumerates the various factors to which the Court will have regard to in ancillary proceedings and these are:-

- (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 to the marriage;
- (f) the contributions made by each of the parties to the welfare of the family including any contributions 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 benefits (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

- [16] Looking at exhibit D.D. 2b (the Deed of Conveyance from Leila Galley to the Petitioner and the Respondent) neither Leila Galley nor her local agent ever spoke to the parties at the time the Respondent purchased the land. It was the Respondent’s brother Nigel and her

father who had been trying to find a parcel of land for her to build her house as they had done for other children of the Greaves family.

- [17] The deed shows that the land was conveyed to the Petitioner and the Respondent without indicating any particular interest held by each. The Respondent has repeatedly said that it was she who urged that the land be put in the names of herself and the Petitioner because they could use it as collateral to borrow money to educate their children at University. There is no presumption whatsoever that the Respondent intended to benefit the Petitioner because he stood in the position in loco parentis. This presumption is rebutted by the Respondent's explanation as to why the Petitioner's name even appears on the deed.
- [18] The mere absence of words of severance in the deed did not necessarily create a joint tenancy in which the legal and beneficial interests are equally owned by the parties. Perhaps it created a joint tenancy of the bare legal estate but to my mind the beneficial interests belonged very substantially to the Respondent by virtue of her much greater contribution. Where two or more persons contribute money in unequal shares a tenancy in common rather than a joint tenancy is presumed. See Lake v Craddock (1732) 3 PW 158.
- [19] I am therefore more inclined to accept the arguments of learned counsel for the Respondent on this issue. One only has to have regard to the cost of constructing the said matrimonial home. The matrimonial home costs in the region of \$550,000 E.C. of which sum the parties only contributed \$62,450 E.C. The Respondent's parents contributed \$487,550 and this excluded the cost of the land. This is in evidence. The land was purchased by the Respondent's father with not a cent contributed by the Petitioner.
- [20] In view of this, how can the Petitioner be entitled to a one-half interest in the matrimonial home? It is clear from the evidence adduced especially exhibits D.D. 3 and D.D. 4 which represent Canadian bank drafts in the Respondent's name alone representing the entire proceeds of the sale of her parents in Etobicoke in Ontario, that the Petitioner contributed very little to the acquiring of the land and the building of the matrimonial home.

[21] The history of the marriage of the parties has been dealt with in some detail in the preceding paragraphs, because it is important for the Court to appreciate the nature of the relationship between them. In apportioning the net value of the matrimonial property between them the Court is invited to take into consideration all of the matters set out in Section 34 of Cap. 176 of the Laws of Saint Vincent and the Grenadine 1990 edition. It is also equally important for me to remind myself that the division of the matrimonial home is the only issue before me.

[22] In the celebrated case of Stonich v Stonich from the Eastern Caribbean Court of Appeal, Saunders J.A. as he then was stated at paragraph 30 of the judgment thus:

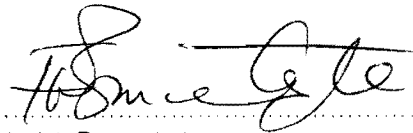
“The MPPA does not rank in any order of preference any of the factors to which the courts are obliged to have regard. It is for the Court to consider all of them. In one case the facts and circumstances may call for a particular factor to be given special importance. In another case another factor may assume more significance. The point is that there is no basis in law for Courts to regard always as decisive or of special significance the financial contribution made by a party to the welfare of the family. In the normal course of things any such contribution should be weighed in the same scales as a contribution of a different nature.”

[23] Having regard to that authority and other authorities put forward by both learned counsel, and having regard to all the evidence adduced both by way of affidavit and viva voce evidence under cross-examination, and having taken into consideration all the factors as laid out in Section 34 of Cap 176 of the Laws of Saint Vincent and the Grenadines, and doing the best that I can in the circumstances of this case it is my view that the petitioner put substantially less in the marriage than the Respondent. She was mother, wife, wage earner, contributor to the marriage through her parents in every sense, and she was the more financially prudent than the Petitioner. It is clear that the Petitioner in this case is trying to reap where he has not sown by claiming half of the assets of the marriage, and despite his own conduct in quitting well-paying jobs even when he couldn't afford to do so.

[24] In the case of Wachtel v Wachtel, Lord Denning posited that a good starting point for the division of the assets is the one-third rule. This may be whittled down or increased depending on the facts of the case. The woman should get more when she stands shoulder to shoulder with her husband looking after the home, the children and earning a

salary. Stonich v Stonich adopts this theme and would settle for a half share for each where the facts so dictate. But unfortunately in this case it is clearly the wife (Respondent) who best fulfilled the criteria set by Stonich v Stonich and also Wachtel v Wachtel. What therefore should be the Petitioner's entitlement?

- [25] Having regard to all the circumstances of the case, I would give the Petitioner a thirty per cent (30%) share in the matrimonial home which I value from the two valuations presented to the court at \$855,000 E.C. With regard to the contents of the matrimonial home, the Petitioner in his affidavit assesses the value at \$150,000 and says that the furniture and contents of the home were purchased in Canada from family funds. The Respondent says that the depreciated value is in the region of \$25,000 but under cross-examination states that the contents are insured for \$100,000. I would place that value of \$100,000 on the contents of the matrimonial home and assess the Petitioner's interest at fifty per cent (50%) since they were acquired from funds from their joint account. Each party is to bear their own costs for these proceedings.



Frederick Bruce-Lyle
HIGH COURT JUDGE