

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 323 OF 2000

BETWEEN:

LANCE KYDD

Petitioner

and

RITA WILLIAMS

Respondent

Appearances: Mr. Samuel Commissiong for the Petitioner
Mr. Arthur Williams for the Respondent

2002: May 06, 07,
September 16

JUDGMENT

ALLEYNE, J.

1. The petitioner filed his petition for a partition of a portion of land at Belmont, Bequia, which had been granted to him and the respondent, his sister, by way of deed of gift No. 168 of 1977, made by their now deceased mother Mildred Kydd. It is not in dispute that the land was granted to them as tenants in common in equal shares.
2. In reality, the issue between the parties is not the partition of the land, but the question of the beneficial ownership of a house which was built on the land

between 1961 and 1962, and improved and extended over the years since then.

3. I have considered the affidavits and witness statements filed by both parties as well as the evidence given in court by the petitioner and his witnesses Victor Henville and Milton Creese, and the respondent and her witnesses Phil Peters and Liston Williams. I found the petitioner generally reliable and consistent, and on the other hand I was not much impressed by the respondent, whose evidence was in some respects contradictory, but even more important, did not appear to me reasonable. The respondent, in my view, sought to mislead the court with regard to her financial resources. Noteworthy is her evidence concerning the contributions which she claimed were made to her by the fathers of her first two children, bearing in mind the prevailing economic situation of the time as witness the evidence relating to the income of the petitioner when he worked in the region, and later of the respondent's husband Liston Williams when he occupied the fairly senior and prestigious position of Head Barman. In that regard the respondent's evidence concerning her own earnings is highly questionable.
4. It is common ground that the petitioner and the respondent grew up with their mother at Belmont, Bequia, on the subject land, in utter poverty, in a two room house, 'chamber and hall', and that both children attained only a primary school education.
5. Some time after leaving school the respondent, older than the petitioner by some two years, went to work at the Health Centre in Bequia, she says as a trainee nurse, and worked there until 1959, when she left to give birth to her second child. She says that she went to Trinidad towards the end of 1960 to seek employment and in pursuit of a better life. This evidence seems inconsistent with the evidence of the petitioner that he joined the National Bulk Carriers towards the end of 1960, at about which time his sister returned from Trinidad to Bequia, and with the respondent's own evidence that her third child

was born in November 1960. It also appears inconsistent with the evidence generally and I believe that the respondent in fact went to Trinidad in late 1959 or early 1960, and returned to Bequia from Trinidad towards the end of 1960.

6. The petitioner, for his part, after leaving school, did various odd jobs, and worked as a sailor on various boats plying between the islands of the region, earning wages originally of \$5.00 per month, graduating to \$10.00 per month. Eventually, in 1960, the petitioner had the good fortune of obtaining employment with the National Bulk Carriers, a shipping company that transported oil internationally. This United States based company paid the princely wages of U.S. \$120.00 per month, and required that he remit a certain proportion of his wages as savings to his family in Bequia. The petitioner claims that he remitted U.S. \$90.00 monthly, while the respondent claims that the sum remitted was U.S. \$80.00. Whatever the case may be, this amount was a considerable sum in those days and in the circumstances of that family. The amount was remitted in the name of their mother.
7. Prior to his departure to take up his employment with National Bulk Carriers, the petitioner traveled to Trinidad to request that his sister, the respondent, return to Bequia to care for their mother, who was apparently at the time elderly, sickly and dependent on her children. The respondent at the time was not employed, having given up her employment due to pregnancy. She was living with a half-brother in Trinidad, and agreed to return to Bequia. She claims to have returned with savings of some \$1000.00. Bearing in mind the limited time she spent in Trinidad and the fact that for a good portion of that time she was not employed, having resigned to prepare for the birth of a child, I find this claim incredible. I do not believe her.
8. After her return to Bequia towards the end of 1960, the respondent obtained employment as a maid at a guest house, and some time later was transferred to work at a Boutique owned by the proprietor of the guest house, as Assistant Manager. It is my view that she has greatly exaggerated her earnings at this

time. I find it very difficult to believe that the respondent as a maid earned double what her husband, the Head Barman, earned at the same guest house, as she claimed in her evidence.

9. Beginning in 1961, a new wall house was built on the land. It was built around the old house in order to allow the old house to be occupied while the new was being built. The old house was dismantled only when the new was close to completion and could be occupied. The new house was habitable, though not complete, by the end of 1962.
10. The petitioner claims that it was his money, which he had remitted to his mother partly for that purpose, which was used to build the house. The respondent, for her part, contends that she built the house with her own money, earned from her employment, supplemented by gifts from Liston Williams, with whom she developed a romantic relationship after her return from Trinidad, when they both worked at the guest house, and whom she subsequently married.
11. It defies credibility that the respondent, returning to Bequia in late 1960, the mother, by this time, of three children, should almost immediately commence the construction of this house as I would have to infer if I were to accept her version of events. It is much more reasonable to infer, as I do, that the sum of money remitted to his mother by the petitioner, whether U.S. \$90.00 as he claims, or U.S \$80.00 as the respondent claims, was used in part to meet the needs of his mother, basic as they were given her circumstances, and of his daughter, and towards the construction of the house. I accept that the petitioner, prior to leaving for the USA, arranged to receive building materials from Hazell's through his relative one O'Neil Mc Intosh, on credit, based on his remittances. I do not accept that the respondent, in her circumstances, was likely at that time to obtain that level of credit facilities, even from a relative employed by a large firm. I bear in mind that her third child was born in 1960, and that she had left her employment in Trinidad because of pregnancy, which

she had also done in 1959 when she was having her second child. It seems she followed the wise practice of giving herself time off work prior to confinement and after birth of her children.

12. I believe that, upon her return from Trinidad, the respondent undertook the construction of the house on behalf of her brother, the petitioner, but for the immediate benefit of her mother and herself, who would live in the house.
13. I accept the evidence of the respondent, supported by the 'Notice of Intention to Erect a New Building', exhibit R.W. 2 annexed to the respondent's affidavit filed on September 28, 2000, that the original building was a three-bedroom building, to which the respondent has added a number of rooms and other improvements since 1962. I hold that the original building, and also the water tank added in 1966, were built entirely with funds supplied by the petitioner, including funds used subsequent to the completion of the original building in 1962 to pay off credit advances for materials used in the construction of the house. However, I do not doubt that the respondent contributed, what may be called sweat equity, to the building of the original house, for which, however, she did not at the time contemplate enjoying a beneficial interest in the house, but rather to enjoy the benefit of residing there with her mother and children indefinitely. Indeed after marriage her husband Liston Williams also resided in the house, and still does. I hold, as a fact, that the original wall building built in 1961 and 1962, containing three bedrooms and other facilities, was built with resources made available for the purpose by the petitioner, and with the intent that the said house would be his. I hold further that in the years following 1962 the respondent greatly extended and improved the house with her own resources, no doubt assisted by her husband.
14. It is clear, especially from a reading of the several letters written to the petitioner by the respondent between 1968 and 1997 and exhibited to the petitioner's affidavit filed on February 14, 2002, that the petitioner and the respondent maintained a very close relationship, that the respondent over the

years continued to suffer some degree of economic hardship and relied to some extent on the generosity of the petitioner, her brother, and that he also assisted her in procuring personal items as well as supplies for her business in Bequia. There was no dispute, indeed no discussion, concerning the ownership of the house, until their mother died, having made a will in which she purported to devise “my dwelling house situate at Belmont, Bequia, in the Saint Vincent Grenadines to my daughter RITA WILLIAMS absolutely.” Thereafter, it became apparent that the respondent was making a claim to the sole beneficial interest in the house, whether as a devisee or in her own right.

15. By the time of her death the deceased Mildred Kydd had alienated all her interest in the land on which the house stood to her children by deed of gift. She retained no legal or beneficial interest in the land. It is common ground that she made no contribution to the cost of construction of the building, and could make no legitimate claim to the house. The maxim *nemo dat quod non habet* applies, and the will does not vest in the respondent any interest in the house.
16. It was put to the petitioner that his mother was an honest woman, and thus her purported gift of the house to her daughter is evidence that the house did not belong to the petitioner. I am not impressed by that argument.
17. In his petition, the petitioner prays an order for partition and sale of the land held in common between himself and the respondent. Section 3 of the Partition Act CAP. 245 provides in part

“3. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, if it appears to the Court that by reason of, or of any other circumstance, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or consequential directions.”

18. Halsbury's Laws of England fourth edition, Volume 39, paragraph 564 declares that on an application for partition the court "may make such order as it thinks fit", and is not bound to order either a sale or a partition (note 2).
19. The powers of the court on an application for partition are broad and discretionary. In addition, and by analogy, the Civil Procedure Rules 2000 (CPR) Part 8.6(2) provides
 - (2) Notwithstanding paragraph (1)(b) the court may grant any other remedy to which the claimant may be entitled."
20. The overriding objective of CPR is declared to be "to enable the court to deal with cases justly." Although this is not specified, dealing with cases justly must include, in the spirit of Part 8.6(2), the granting of the remedy which is most appropriate in the circumstances of the case, and is within the powers of the court.
21. In the circumstances of the case before the court, the respondent having lived legitimately in the house for 40 years, and having considerably extended and improved it over that period, albeit without consultation with or the leave of the petitioner, it would be unjust, in my view, to deprive her of the benefit of continued use and occupation of the house. I bear in mind also that the petitioner resides in Canada, and has not indicated any immediate interest, or indeed any future intention, to return to reside in Bequia.
22. In the circumstances I hold that the justice of the case requires that the land be divided between the petitioner and the respondent in equal shares, the portion on which the house is located being allocated to the respondent. I hold further that the petitioner is entitled, as against the respondent, to be compensated for the value, at present market value, of the original part of the house, constructed between 1961 and 1962, and of the water tank constructed in 1966, the valuation to be carried out by a person to be agreed

between the parties or, failing agreement within 14 days of this date, to be appointed by the court.

23. It is therefore ordered that a licensed land surveyor or property valuer, to be agreed upon by the parties, or failing agreement within 14 days of this order to be selected by the court, survey the land the subject matter of this action, being all that lot piece or parcel of land situate at Belmont, Bequia in the State of Saint Vincent and the Grenadines admeasuring seventeen thousand two hundred and eighty-three (17,283) square feet and abutted and bounded on the North by lands in the possession of Claude Gurley on the South by lands in the possession of Cyril Mitchell on the West by the sea and on the East by lands in the possession of Elaine Gordon or as the same is more particularly delineated or shown on a Plan or Diagram prepared by E. Stinson Campbell Licensed Land Surveyor and recorded in the Lands Office of the State of Saint Vincent and the Grenadines on the 13th day of March 1964 and known as Plan Number GR1/63, and recommend a division thereof in equal shares so far as is possible both in terms of size and value (excluding the value of the building or buildings thereon), between the petitioner and the respondent, so that the portion on which the dwelling house is erected falls within the portion allocated to the respondent, and report to the court with his recommendation within 30 days of being served with this order.
24. It is further ordered pursuant to R. 32.9 of the Civil Procedure Rules 2000 that a person qualified to value buildings, to be agreed between the parties, or failing agreement to be selected by the court, value the part of the dwelling house on the said land referred to in paragraph 13 of this judgment, being the original building built between 1961 and 1962 approximately, and the water tank built in 1966, at present market value, and that the respondent pay to the petitioner the value thereof as so determined, within 30 days of the valuation aforesaid having been filed in the court office. The attention of the parties is directed to R. 32.11(1) and (2) and 32.14.

25. The parties are granted liberty to apply in respect of any matter arising out of this order.
26. The respondent shall bear the costs of valuations and shall pay to the petitioner his costs of this action, to be agreed or assessed on the basis of the value determined in accordance with paragraph 24 hereof.

Brian G.K. Alleyne
High Court Judge