

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 123 OF 1992

BETWEEN:

YVONNE ELIZABETH WILLIAMS

Petitioner

and

KENNETH SYLVESTER WILLIAMS

Respondent

Appearances:

Mr. Williams for petitioner.

Mrs. Kay Bacchus-Browne for respondent.

2001: November ; December 18

IN CHAMBERS

JUDGMENT

ALLEYNE J.

[1] This is an application for ancillary relief by the respondent, the husband, in which he seeks financial relief and property adjustment in respect of the petitioner/wife's property, as indicated in paragraph 2 of his affidavit filed March 3, 1993.

[2] The respondent alleges that after the marriage, and between 1975 and 1983, while he worked as a seaman on various ships, he sent much of his salary, totalling \$51,800.00 United States currency, home for his wife to invest and to build the matrimonial home. On his return home he claims to have found that his wife had converted most of the money to her own use and had built a house and registered it in her own name.

- [3] The respondent alleges that the petitioner, through her lawyer, agreed to transfer the title to the matrimonial home to him on condition that he pay off the mortgage balance, then standing at the sum of \$2000.00. He was impecunious, and unable to raise that sum, and he says that as a result the title remained in the petitioner's name.
- [4] The respondent further alleges that the petitioner used his money to acquire a number of additional real and personal assets, to a value of \$113,000.00.
- [5] The respondent further alleges that the petitioner is employed in the public service of St. Vincent and the Grenadines, at a monthly salary of \$1000.00, while he earns \$600.00 monthly from unspecified sources, owns only a boat which is in need of repair, and owes a total of \$13,400.00 to various named creditors. His monthly living expenses including loan repayments total \$1995.00. He is seeking an order for an accounting, a transfer of the matrimonial home to his name, and repayment of the money received by the petitioner from him, which he claims she converted to her own use.
- [6] In her affidavit filed on April 1, 1993, the petitioner sets out in some detail the money which she acknowledges the respondent sent her, and the disposition thereof, including the establishment of a joint account on which both parties drew, and the passbook for which she claims the respondent has, the taking of various loans, and the purchase from those resources by the respondent and for his benefit of a van which he subsequently sold, without her knowledge or approval, and without accounting to her. She alleges that various loan service payments and other expenses, including expenses incurred on and in respect of the van, were paid by her out of her earnings.
- [7] She alleges that the land on which the matrimonial house was built, which has for many years been exclusively occupied by the respondent since the separation in 1982, was acquired by her before the marriage, which is why the title was subsequently registered in her name.

- [8] The petitioner alleges that she received back pay, in an unspecified amount and on an unspecified date, all of which, she alleges, went towards payment of the loan account.
- [9] In a further affidavit, headed AMENDED AFFIDAVIT OF MEANS, filed on March 1, 1994, the petitioner provides details of the breakdown of the relationship, and further details of her version of the financial transactions. In this affidavit she alleges that virtually all the respondent's earnings went to his parents, and some towards his brothers' education, and that she advanced various amounts to him to meet his needs. She reaffirms that the matrimonial home was built on land which she had bought before the marriage, with funds which she earned or borrowed, amounting to some \$18,000.00, supplemented by \$12,000.00 from their joint account.
- [10] The petitioner, who claims to have invested considerable sums into the house, as well as sums in excess of \$15,000.00 in the van which has since been sold by the respondent without any accounting to her, asserts that, while she had to rent accommodation for herself, the respondent not only lived rent free in the matrimonial home, but rented part of it to another person, and enjoyed other financial benefits from the cultivation of the land.
- [11] In that further affidavit the petitioner provides updated information on her earnings and expenses.
- [12] The respondent replied by a further affidavit filed January 9, 1996, which, I feel constrained to comment, is drafted in most unprofessional and intemperate language, unworthy of any Solicitor. In this affidavit he claims credit for virtually all the expenditure on the house, citing in support a letter from the petitioner's former Solicitor exhibited to the affidavit. He also claims credit for virtually all expenditure on the van, conceding only that the petitioner borrowed \$5,000.00 to insure it, but asserting that he sent her the money to repay this and another loan, in the sum of

\$9,000.00, all of which he says she appropriated to herself, leaving him to pay both loans over again.

[13] The respondent further alleges that the van was worked by the petitioner when he went to sea and she kept all the proceeds. He concedes that she remodelled the van from the proceeds.

[14] The respondent denies that the petitioner purchased the land on which the matrimonial home is built before the marriage, out of her own resources. He claims to have sent the full purchase price for the land to the petitioner, who paid it over to the vendor of the land. The letter from Dr. Gonsalves, the petitioner's then Solicitor, exhibited to the affidavit, confirms that the petitioner acknowledged the respondent's interest in the property and expressed willingness to transfer title to same upon payment of the outstanding loan on the land of \$2000.00. This letter is dated November 10, 1983.

[15] In an affidavit sworn on April 7, 1993, filed on behalf of the respondent, Beresford Nicholas, the vendor of the land on which the matrimonial home is built, deposed that the respondent approached him concerning the purchase of the land in or about 1975, and promised to send the purchase price when he went away to take up employment at sea. The deponent says that subsequently, in that same year, the petitioner brought him the purchase price and said that her husband, the respondent, had sent it. He wrote a receipt in the respondent's name, he says. Notwithstanding that, on 19th December, 1975, he executed a deed of conveyance of the land in favour of the petitioner, without mention whatsoever of the respondent or of any interest of the respondent in the land.

[16] The petitioner does not appear to have responded directly to Nicholas' very specific and direct allegations, even in her affidavit sworn on February 28, 1994 and filed on March 1 that year. In that affidavit she does say that she bought the property with her own funds, prior to the marriage, but for some reason does not address Nicholas' allegations, nor does she support her own allegations regarding

the loans she says she utilised to purchase the property, by exhibiting any records to verify the allegation. She has produced some bank records, but none of these relate to any period prior to 1978, and therefore are clearly not relevant to the alleged transactions prior to the marriage, which took place in 1974, or to the conveyance, which occurred in 1975.

[17] I have come to what I consider the inescapable conclusion that both parties contributed to the acquisition and/or construction of the matrimonial home, and that the respondent contributed the major share of the resources towards that purpose. I therefore order that the respondent, who has admittedly lived in the said house for many years to the exclusion of the petitioner, must have the property, i.e., the land on which the matrimonial house is built, and the said house, free and clear of any interest of the petitioner. In the circumstances of this case, a clean break is clearly called for.

[18] The said property is to be valued by a valuer agreed upon by the parties, or failing agreement to be appointed by the court, and the respondent must pay the petitioner one third of the value so found. Upon payment, the petitioner must execute a deed of conveyance transferring title in the said property to the respondent, free and clear of all incumbrances.

[19] During much of the subsistence of the marriage the respondent was working as a seaman, and consequently was away from St. Vincent and the Grenadines. He would send money home, which the petitioner was entitled to apply to household expenses, savings and other legitimate expenses or investments. I accept that the petitioner also worked, both as a civil servant, at relatively modest earnings, and as a private entrepreneur, her earnings from which activity helped to increase the family resources.

[20] The marriage effectively lasted for somewhat less than 10 years, and the petitioner left the matrimonial home in 1984. During that period, despite her modest

earnings, she was able to acquire and build the matrimonial home, in her name, but as I have found, with resources provided by both parties.

[21] By Indenture made December 5, 1989, and by Indenture dated December 30, 1994, in each case many years after the effective breakdown of the marriage, the petitioner became entitled to two portions of land containing respectively 1 acre 4 poles, and the other described as containing "One Lot more or less", the latter by way of deed of gift from her father. There is no basis for the respondent's claim to be entitled to any share in either of these properties. It is declared that the said properties are the exclusive property of the petitioner.

[22] It is my view, from the evidence before me, that both parties benefited from the use of the van, and each had access to the income therefrom while it was in their hands. The van is no longer available for distribution, and no order is made with reference thereto.

[23] I have taken into account arguments put forward by Counsel in written submissions, and in particular the principles adumbrated in **Barnes v Barnes** [1927] 3 All E.R. at 872, **Wachtel v Wachtel** [1973] 1 All E.R. at 830, and **Hughes v Hughes** [1993] 45 W.I.R. 149, and have come to the conclusion at which I have arrived bearing in mind these principles.

[24] The petitioner and the respondent now live separate and independent lives, and have done so for many years past. Indeed to a considerable extent, even before the breakdown of the marriage, the parties lived largely separate and independent lives, due in part, though perhaps not entirely, to the nature of the respondent's occupation as a seaman. I do not consider it appropriate, in the circumstances of this case, to make any order for maintenance or other financial provision, or property division order, other than the order made with respect to the former matrimonial home.

[25] I make no order as to costs.

Brian G.K. Alleyne
High Court Judge