

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

Civil Suit No. D21/1993

Between:

MARIE MADELEINE FRANCIS

Petitioner

vs

SIMON PETER FRANCIS

Respondent

Appearances

Mrs Veronica Barnard for Petitioner

Mr. Winston Hinkson for Respondent

2000: February 17th & 25th
June 30th

JUDGMENT

[1] **d’Auvergne, J.** The parties, the Petitioner a St. Lucian and the Respondent a Dominican were married on the 13th of December, 1991, in London, England where they lived for a short while and thereafter at Richfond, Dennery, in the island of St. Lucia. The evidence discloses that soon after marriage unhappy differences arose and on the 25th of March 1993 the Petitioner filed for an order for dissolution of the marriage, notwithstanding that the five years set by law had not elapsed.

[2] On the 5th of November 1996 Decree Nisi of divorce was granted which was made absolute on the 13th of August 1999. In between these two events on the 20th day of February, 1997, the Petitioner filed for an order that the matrimonial home situate at Bois Jolie in the quarter of Dennery, be declared the sole property of the Petitioner; that the Petitioner do pay to the Respondent his share of the matrimonial property, less the Petitioner's share of the motor car bought in England for £999.00 and the costs of the petition.

[3] The supporting affidavit of the Petitioner stated that during the marriage the Respondent operated a tailor shop earning an average of £300.00 per week plus a weekly pension of £80.00 per week, that they jointly built the matrimonial home at Bois Jolie, Dennery, which comprised of an incomplete concrete building before he left in 1993; that she had expended the sum of \$43,363.50 repairing and installing, plumbing and electricity in the said house. Exactly one year later viz the 20th day of February 1998 the Respondent filed his affidavit in reply in which he stated that he left St. Luica in 1993 in order to return to their former matrimonial home in England; that upon his return to St. Lucia in 1996 he found the Petitioner and one Gomorrah occupying the house at Bois Jolie.

[4] He deposed that the house at Bois Jolie belongs to him having been purchased with his separate funds and earnings as evidenced by receipts and his Alien

Land Holding License but to date his Deed of Sale could not be registered because of a caution placed by the Petitioner.

[5] He further deposed that the property they own at Richfond, Dennery, is community property purchased during the subsistence of the marriage with direct contributions from them but that since he had not yet obtained an alien's license the Petitioner placed the property in her sole name and that he sought an order in the following terms:

- (1) That the property situated at Bois Jolie is my separate property and does not form part of the community.
- (2) That the property at Richfond be declared community property.
- (3) That the Petitioner be ordered to pay the costs of and occasioned by this suit.

[6] After many adjournments mainly because the Respondent still resided in England, the matter was commenced on the 17th day of February 2000 and concluded on the 25th February 2000. The parties both gave long winded evidence on their own behalf with the Respondent calling three witnesses including a brother of the Petitioner.

[7] The Petitioner told the Court that the house at Bois Jolie was started during the period of their cohabitation, before marriage. She testified that during her sojourn in England she did three jobs daily, two cleaning jobs one from 5.00

a.m. to 6.00 a.m., then to the full time job as a tailor's assistant from 7.00 a.m. to 7.00 p.m. and then from 8.00 p.m. to 9.00 p.m., that she received Eighty pounds (£80.00) per week for the two cleaning jobs and that she also worked on Sundays with the Respondent as a tailor's assistant sewing "sleeves...then the sides"; that they both came to St Lucia and after negotiating the sale of the land at Bois Jolie "our monies went into the initial deposit of \$2,000.00. We went up to London and gave the builder on our return Forty Thousand dollars (\$40,000.00) to cast the house....he charged \$140,000.00 to build the whole house."

- [8] She gave evidence of the problems encountered with the builder who claimed that the agreed amount of \$140,000.00 was insufficient; that they sought help from the Planning Department and were advised to pay an extra \$17,000.00 to the contractor for the completion of the house but the Respondent refused. She paid the amount from monies given to her by her five children from a former marriage ranging 42 years to 20 years; that the builder brought the house to a habitable state though incomplete and that she paid for the installation of electricity and pipe borne water. She exhibited two reports from quantity surveyor, Neville Trim, one dated 11th May 1992 where he noted the following

(a) "Our valuation – Cost to Construct

Assuming a normal contract/client relationship, I assess the cost to construct the building at \$230,000.00. Upon completion of the

building, I would suggest a replacement cost valuation, assuming 100% destruction, of \$245,000.00.

(b) Value of Work done to date

I consider the building to be 70% complete; this includes an allowance for unacceptable workmanship.

Consequently, I value the building work at \$160,000.00.

© Estimate to complete

Assessment for completing the building, including remedial work is \$70,000.00.” The other report is dated the 3rd of June 1997 in which he referred to his former report and noted the estimated amount expended since the former report to be \$52,400.00.

[9] She exhibited the various bills for the purchase of material noted and receipts for labour done to the house after the second report. The Petitioner paid \$700.00 for the second report. Bills exhibited were (1) \$390.00 materials paid for repair of roof dated 8th October 1998. (2) \$8,750.00 dated 12th January 1999 to builder for repairs to the said roof and \$7,363.50 for installation of a hot water system. She also exhibited an estimate for the construction of a rubble wall of over \$5,000.00 which she said she paid for.

[10] The Petitioner gave details concerning the purchase of the motor car for £999.00. Her facts were substantiated by an exhibit dated 19th September 1992 (car bought in Respondent’s name)

[11] The Richfond property which is mentioned in the Respondent's affidavit and which he referred to as the matrimonial home and consented to its being considered as community property was vehemently opposed by the Petitioner who stated that it is her property, for she purchased it with her separate funds and exhibited a document which indicated that she had paid for the purchase price.

[12] A list of numerous itemized piece of furniture was exhibited by the Petitioner who claimed them to be hers from a former marriage and which were either taken or destroyed by the Respondent.

[13] She testified as to a bank account at Barclays Bank, Castries, St. Lucia which was jointly owned and divided. She said that she "was given half of the amount viz \$10,700.00 and some change." She concluded her evidence in chief by telling the Court that she really loved her husband and would never have left him and how she tried to better the faults that Respondent attributed to his former wife.

[14] Under Cross Examination she maintained that the land at Bois Jolie was jointly purchased but denied that the land and houses on the Richfond land were jointly owned. She insisted that she was employed full time 7 a.m. – 7 p.m. as a tailor assistant with the Respondent who owned a tailor shop while

maintaining her part-time jobs and of her constant trips to St. Lucia selling items of clothes and household objects which she had purchased from the markets in England.

[15] The Respondent told the Court that they both met and fell in love while they were still married to other persons. They eventually divorced their spouses and married each other but before that event they had visited St. Lucia where they decided to purchase the land at Richfond, Dennery. On returning to England they remitted monies to her brother Bertram John who lived at Deniere Riviere, Dennery to purchase the Richfond land. The then lawyer suggested that since he, the Respondent was still unmarried to Petitioner and had no alien's license that the land should be purchased in the Petitioner's name and after their marriage, the formalities would be rectified and settled. He said that even after their marriage, ancillary matters between Petitioner and her former spouse were still being negotiated with a view to settlement.

[16] He testified that "in 1992 we lived at 5 Beech House Strokenewington, London N.16 and in November 1992 we broke up at that house. In 1992 I bought a piece of land at Bois Jolie Dennery. It cost \$20,500.00 I bought it with my own money in my name" and exhibited receipts written out to him dated 13th March 1991 in the sum of \$2,000.00 and one dated 18th March 1991 in the sum of \$18,502.00 paid in full.

- [17] He testified to his opening a joint account at Barclays Bank from proceeds of a small estate he owned in Dominica sold for Ninety six Thousand dollars (\$96,000.00) in 1991.
- [18] He confirmed that he had an agreement with Jonathan Construction Services to build the house at Bois Jolie for the cost of \$140,00.00 and that Jonathan Charlery was the contractor, that the latter breached the contract for he did not complete the house in the promised six months but demanded an extra \$17,000.00 which he refused to pay and which to date refuses to believe that the Petitioner paid for. He confirmed the first report by Neville Trim which was requested by both of them, also of the boarding of the building before they left for England in 1992. He said that they both returned to St Lucia in November of that year, but the Petitioner arrived four days ahead of him.
- [19] He then gave a history of the various pieces of furniture at the Richford house but was unable to produce receipts for all of them since he alleged that the Petitioner had taken them away.
- [20] He categorically stated that it was agreed between them that the Petitioner's share of her property (referring to the land at Richfond, Dennery) received from her first husband would be bequeathed to her son and daughter Sandra and that his property at Bois Jolie would be donated to his son David. He insisted that in 1993 both of them were unemployed and were recipients of

state benefit and that she received just under Thirty-six pounds (£36.00) weekly, that he was the only one who paid for the car bought for £999.00 noted earlier; that he contributed to the purchase of the land in Richfond and the building of the two houses which are rented and that he presently collects the rentals.

[21] Under cross examination he admitted that the joint account was open before their marriage while the two wooden houses were being built. He denied that the Petitioner held the various jobs she told the court, of her buying items from the various markets and retailing them in St. Lucia, of her being his assistant, of his using violence towards the Petitioner and of any discussions held by his former solicitors with Petitioner's solicitor on his behalf; that one of the houses at Richfond was an extension to Petitioner's mother's house and that he ever carried away any of the matrimonial furniture and stored them at a woman by the name of Mona.

[22] Bertram John the brother of the Petitioner told the Court that he met the Respondent when the latter accompanied his sister to St. Lucia about ten years ago, that the Respondent spoke to him about purchasing land at Richfond, Dennery, which would be for sale in the near future, that when he was informed of the selling of the said parcels of land at Richfond he telephoned the Respondent who told him that Petitioner would be coming to St. Lucia to do the needful, that she came as he had promised, that the consideration was

deposited at the office of Barrister Evans Calderon, and later was issued with a cheque as payment for the piece of land at Richfond. He however concluded that he did not know whether the consideration paid for the land was solely that of the Petitioner or the Respondent or jointly owned.

[23] Alfred Phillip said that he was the carpenter who constructed the two houses at Richfond, Dennery. He said that though the Petitioner was always present it was the Respondent who employed him, paid him and who purchased the materials for the said constructions. He also testified that he was never hired by the Petitioner to break down part of her mother's house at Grand Riviere and to transport it to Richfond, Dennery. He said that he did not know whether the monies used to pay him and buy materials were solely owned by Respondent or the Petitioner or jointly owned.

[24] Phillip Monzie testified that he was the one who boarded the house at Bois Jolie, that the Respondent hired him and bought materials, that the Petitioner was very often present while the job was being done. This witness was also ignorant of the source of the monies which was paid to him for his labour.

[25] **Addresses**

Learned Counsel for the Respondent argued that the cash which was used in the purchase of land and houses at Richfond and the property at Bois Jolie

belonged to the Responded, his separate funds from the sale of his properties in Dominica and England which he owned before he met the Petitioner.

[26] He quoted the case of **Young and Another v Bess, Privy Council Case, 46 West Indies Report Page 171.**

Bernice Mc Millian vs Loretta Peters and Loretta Peters (administratrix or personal representative of the Estate of Wilton Peters deceased and Articles 5 and 1180 of the Civil Code of St. Lucia.

He contended that the Bois Jolie land was bought in April 1991 and the parties were married in December 1991.

[27] Learned Counsel for the Petitioner urged the Court to take cognisance of the fact that the Petitioner was semi illiterate and that the Respondent was a smart English man, that the land at Richfond in the Petitioner's name was paid for by the Petitioner before their marriage in December 1991, that none of the witnesses on behalf of the Respondent could enlighten the Court as to the source of the monies paid to them.

[28] She further urged the Court to disbelieve the Respondent for he was not a witness of the truth and to note in particular his assertion that the properties were bought with his separate funds and that he only placed his wife's name on the joint account for convenience.

[29] She concluded by stating that Respondent was a violent man who had destroyed the items of furniture and other belongings belonging to the Petitioner from her first marriage and those bought and donated to her during their own marriage and that he had to be ousted from his matrimonial home by the police on behalf of his first wife and again by his second wife the Petitioner.

[30] **Conclusion**

Both properties, the one at Richfond, Dennery purchased in 1989 in the name of the Petitioner and the one purchased at Bois Jolie in March 1991 in the name of the Respondent were purchased before the marriage of the parties.

There is absolutely no doubt in my mind from all the evidence led that the parties acquired the properties by their joint efforts with the intention of setting up home together for they eventually married in December 1991.

Therefore applying the principles of **Gissing v Gissing 1971 A.C 886, Cooke v Head 1972 2ALLER, 38 Abdool Hack v Rahieman 27WIR109** the Petitioner held the land at Richfond on trust for herself and for the Respondent beneficially and vis versa with the land at Bois Jolie.

31. The account at Barclays Bank was opened in their joint names before November 1990 as can be gleaned from the exhibit tendered by the Respondent. The monies for the sale of the Respondent's estate in Dominica

was deposited into that account thus showing the intention that the Petitioner should be entitled to one half share of the property.

32. I believe the Petitioner that she held the various jobs in England and that she visited St. Lucia on several occasions and on those various visits, sold clothing and other household items, and that the proceeds were deposited into that said account. A perusal of the bank statement exhibited will show the withdrawal of monies which can be inferred was used for the construction of the houses at Richfond and for the payment to Jonathan Construction Services for the construction of the house at Bois Jolie.
33. I believe the Petitioner that since 1992 after the boarding of the incomplete house at Bois Jolie the Respondent has not contributed any monies towards the said house which quantity surveyor Neville Trim saw and concluded that \$52,400.00 had been expended to bring it from what he saw in May 1992 to its present state in June 1997. I have also considered the \$96,000.00 proceeds of sale of land in Dominica, then Respondent's separate funds which he placed into the common pool.
34. The car purchased by the Respondent on the 19th September 1992 in England from Francis Road Car Sales for £999.00 falls into the same category as the above mentioned properties viz a resulting trust in favour of the Petitioner.

The car no longer exists and they both had use of it, albeit, the Respondent had a longer use and enjoyment.

35. With regard to the holding of land in the name of an Alien as the Respondent then was in 1991 when he purchased the Bois Jolie land in his name (for he only granted a license in 1994) it is now settled law since **Young and Another v Bess 46WIR 171** that if land is held in the name of an alien who does not have a license to hold such, the effect of the **Aliens Land Holding Regulation Act** is that the Alien's title to the land is voidable and not void. The Respondent now holds a license and can therefore hold land in his own rights. I have also considered that the Petitioner now lives in the house on the Bois Jolie land.
36. The evidence discloses that both parties are in possession of bits and pieces of furniture and clothing bought during the subsistence of the marriage. It would be a most onerous task for the Court to trace every item. Divorce is a misfortune not a blessing therefore it is my judgment that the parties should retain whatever is presently in their possession.
37. My order is there as follows:
- That the property comprising of house and land situate at Bois Jolie in the quarter of Dennery belongs to the parties in equal shares.

That the property comprising of two houses and land situate at Richfond
quarter of Dennery belongs to both parties in equal shares.

That each party do bear his or her own costs.

**Suzie d’Auvergne
High Court Judge**