

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT A. D. 1995

CIVIL SUIT NO. 168 OF 1992

BETWEEN:

XAVIA MULINDA RAMSEY

PLAINTIFF

and

MEDINA ROGERS

DEFENDANT

Appearances: Mr. Lee Moore, Q.C. and Misses Patricia Dublin and Sophia Lawrence for Plaintiff

Mr. Terence Byron, C.M.G. for Defendant

{1995: 27th February; 5th May}

J U D G M E N T

VELMA L. HYLTON, Q.C. J

The parties are brother and sister. The Plaintiff being the young brother of the Defendant. The uncontradicted evidence (which I accept and find to be true - though it does not affect the case and the only relevance is to ground the setting in which the dispute arose) is that the Defendant as the eldest of her mother's children migrated in her youth to the USVI and subsequently all her siblings and her mother migrated thereto with the assistance in general, of the Defendant.

The Defendant's marriage ran into difficulties and in an effort to safeguard her separate estate she entered into a loose arrangement with her brother the Plaintiff but this though it went well for a while, also ran into difficulties which resulLed in the instant suit.

On 29th July, 1992 the Plaintiff caused a Notice of Writ of Sunm,ons to be filed - paragraphs 4 to 19 including particulars of the claim are as follows:-

"4. While in St. Thomas the Plaintiff and the Defendant had an arrangement whereby either would purchase property solely with his or her own monies and would have the

Conveyance or other document of title made in favour of the other solely or of both jointly without any intentions whatsoever that the one who did not provide any part of the purchase price should receive any beneficial interest whatsoever in the property purchased but that the other should hold in trust for the one that provided the purchase money.

5. Roundabout the year 1975 the Defendant with her own monies only and without any financial assistance whatsoever from the Plaintiff purchased at Estate Mofally in the Island of St. Thomas.

6. Roundabout the year 1976 the Defendant without any consideration whatsoever from the Plaintiff voluntarily conveyed the said property at Estate Mofally to the Plaintiff that he should hold the same in trust for her.

7. In or about the year 1977 the Plaintiff with his own monies only and without any financial assistance whatsoever from the Defendant purchased a lot of land at Harbour View Housing Development in the Island of

St. Christopher and had the Deed of Conveyance made out in the names of himself and the Defendant jointly so that the Defendant should hold an undivided half share estate or interest in the said land in trust for the Plaintiff. The said Deed of Conveyance No. 3650 dated the 22nd day of November 1977 is recorded in Liber V Volume 6 Folios 2198 to 2201 of the Register of Deeds for the Island of St. Christopher.

8. In or about the year 1978 the Defendant sold the property at Estate Mofally aforesaid and the Plaintiff by the direction of the Defendant conveyed the property to the Purchaser who paid all of the purchase money to the Defendant. The Plaintiff received none whatsoever of the purchase money.

9. In or about the year 1979 the Plaintiff with his own monies only and without any financial assistance whatsoever from the Defendant purchased a property at Estate Annas Retreat No. 1 New Quarter in the Island of St. Thomas and had the Deed of Conveyance made out in the names of himself and the Defendant so that the Defendant should hold an undivided half share estate or interest in the said property in trust for the Plaintiff.

10. In or about the year 1981 the Defendant with her own monies only and without any financial assistance whatsoever from the Plaintiff purchased a property at Estate Lerkenlund No. 9 Great Northside Quarter in the Island of St. Thomas and had the Conveyance made out in the names of herself and the Plaintiff jointly so that the Plaintiff should hold an undivided half share estate or interest in the said property in trust for the Defendant.

11. In or about January 1988 the Plaintiff and the Defendant orally agreed that in consideration of the Plaintiff executing a deed of Conveyance or other document of title so that the Defendant shall become seised of the entirety of the property at Estate Lerkenlund No. 9 Great North side Quarter aforesaid as sole absolute beneficial owner in fee simple in possession the Defendant

would likewise execute deeds of conveyance or other documents of title so that the Plaintiff shall become seised of the entirety of the property at Harbour View Housing Development aforesaid and also the entirety of the property at Estate Annas Retreat No. 1 aforesaid as sole absolute beneficial owner in fee simple in possession.

12. In pursuance of the said agreement mentioned in paragraph 11 above, the Plaintiff on the 9th day of March 1990 executed a quit claim deed so that the Defendant became seised of the entirety of the property at Lerkenlund No. 9 Great Northside Quarter aforesaid as sole absolute beneficial owner in fee simple in possession.

13. In pursuance of the said Agreement mentioned in paragraph 11 above the Defendant on the 3rd day of April 1990 executed a Quit claim Deed so that the Plaintiff became seised of the entirety of the property at Estate Annas Retreat No. 1 New Quarter aforesaid as sole absolute beneficial owner in fee simple in possession.

14. The Defendant has on several occasions acknowledged and declared orally to the Plaintiff in the presence of other persons that she has no beneficial share, estate or interest in the said land

at Harbour View Housing Development aforesaid and that the entire land belongs to the Plaintiff solely and absolutely.

15. The Defendant has on a few occasions acknowledged and declared orally to one Nassibou Butler that she contributed no monies whatsoever towards the purchase of the land at Harbour View Housing Development aforesaid and that she is not entitled to any beneficial share estate or interest whatsoever in the said land at Harbour View Housing Development despite the fact that her name and the Plaintiff's name appear on the Deed of Conveyance in respect of the said land.

16. In breach of the said Agreement mentioned in paragraph

11 above the Defendant failed, refused, neglected or omitted and still fails, refuses, neglects or omits to execute a Deed of Conveyance or other document of title so that the Plaintiff shall become seised of the entirety of the land at Harbour View Housing Development aforesaid as sole absolute beneficial owner in unincumbered fee simple in possession.

17. The Plaintiff has orally and in writing requested the Defendant to execute a deed of Conveyance or other document of title so that the Plaintiff shall become seised of the entirety of the said land at Harbour View Housing Development aforesaid as sole absolute beneficial owner in unincumbered fee simple in possession and the Defendant has failed refused

neglected or omitted and still fails, refuses, neglects and omits to execute any deed of conveyance or other document of title so that the Plaintiff shall become seised of the entirety of the said land as sole absolute beneficial owner in unincumbered fee simple in possession.

18. By reason of the Defendant's breach of agreement and refusal, default, neglect or omission as aforesaid, the Plaintiff has been denied the title of the entirety of the said land as sole absolute beneficial owner and its use benefit and enjoyment and has been put to considerable inconvenience trouble and expense and has thereby suffered loss and damage.

19 By reason of the Defendant's breach of agreement as aforesaid the Plaintiff was unable to sell the said land for the price or sum of \$59,259.62 in order to provide the purchase money for a lot of land that the Plaintiff bought at Franklands in the Island of

St. Christopher. The Plaintiff on the 17th day of July 1990 had to borrow from National Bank Ltd the sum of

\$52,330.00 with interest at the rate of 12% per annum in order to pay the purchase price for the land at Franklands aforesaid. The Plaintiff has up to date repaid interest on the said loan in the sum of

\$10,466.00 and also paid the sum of \$6311.80 being expenses for obtaining the said loan.

PARTICULARS

Interest on loan from 17/7/90 to 17/7/92 Expenses incurred in obtaining loan

AND THE PLAINTIFF Claims:-

\$10,466.00 6,311.80

(i) A Declaration that the Plaintiff is entitled to the entirety of the said land at Harbour View Housing Development as sole absolute and beneficial owner in unincumbered fee simple in possession.

(ii) A Declaration that the Defendant holds an undivided one-half share estate or interest in the land at Harbour **View** Housing Development aforesaid in Trust for the Plaintiff.

(iii) An order that the Defendant do execute a deed of Conveyance or other document of title so that the Plaintiff shall become seised of the entirety of the said land at Harbour View Housing Development as sole absolute beneficial owner in unincumbered fee simple in possession.

(iv) the said sum of \$16,777.80

(v) Damages

(vi) Costs

(vii) Further and other relief."

The Writ in like terms with Statement of Claim endorsed therein was filed on 17th September, 1992.

The Plaintiff obtained leave to serve the Writ out of the jurisdiction on 31st July, 1992 and appearance was entered on 1st September, 1992. Defence and Claim belatedly filed on 12th February, 1993 after a somewhat lengthy correspondence between the legal representatives of the parties.

The Defence and Counter-claim from paragraphs 4 to 13 are as follows:-

"4. The Defendant does not admit paragraphs 4 - 10 nor paragraphs 12 and 13 of the Statement of Claim.

5. The Defendant denies paragraphs 11 and 14 - 19 of the Statement of Claim.

6. In relation to paragraph 15 of the Statement of Claim the Defendant states that Mr. Nassibou Butler to whom reference is made in the said paragraph 15, was at all material times her Solicitor and was and is bound

by the confidentiality of that relationship insofar as any statements attributed to the Defendant as having been made to the said Mr. Nassibou Butler are concerned. The Defendant will claim that any such statements attributed to her are privileged communications which the said Mr. Nassibou Butler was and is estopped from disclosing without her consent, which has not been given to Mr. Nassibou Butler.

7. The Defendant does not admit that the Plaintiff is entitled to Claims Nos. (i), (ii) and (iii).

8. The Defendant denies that the Plaintiff is entitled to the sum of \$16,777.80 or any other sum and the Defendant further denies that the Plaintiff is

entitled to damages, costs or further and other relief.

COUNTERCLAIM

9. By virtue of a Certificate of Title dated the 26th day of August 1971, recorded in Book W1 folio 93 of the Register of Titles for the island of St. Christopher, the Defendant became registered proprietor with title indefeasible in respect of all that lot, piece or parcel of land more particularly described as Lot No.

26 of the La Guerite Housing Development, Basseterre, St. Kitts. The Defendant paid for this property with her own money.

10. The Defendant purchased a chattel house with her own money, paid for various extensions to the said chattel house on the lot of land referred to in paragraph 9 hereof and gave the Plaintiff the freedom to occupy the said house and to enter the said lot of land whenever the Plaintiff might choose to do so, reserving for the the Plaintiff a bedroom, even though the Plaintiff had made no contribution to the purchase of the house or the land or to any improvements made thereon prior to the year 1977.

11. In 1977 the Plaintiff and the Defendant agreed that in consideration of the Plaintiff carrying out certain alterations and additions to the said house, the Defendant would add the Plaintiff's

name to the Defendant's aforesaid Certificate of Title, and that the Plaintiff and the Defendant would own the same

as joint tenants on the basis of equality of interest thereafter.

12. In pursuance of the said agreement, the Defendant executed a Memorandum of Transfer of the said land and procured the issuance of a new Certificate of Title thereof in favour of the Defendant and the Plaintiff as joint tenants, the same being dated the 1st day of December 1977 and recorded in Book C2 folio 168 of the Register of Titles aforesaid.

13. The Plaintiff, following a deterioration of the relationship between the Plaintiff and the Defendant, has refused the Defendant's invitees access to the said house, has abused and threatened the Defendant's said invitees, has arbitrarily sealed off a portion of the said house without the knowledge or consent of the Defendant, and has conducted himself in so outrageous and calculated a manner as to materially interfere with the Defendant's quiet and peaceable enjoyment of the said property in which she is an equal partner, where the Defendant has suffered damage and has been put to inconvenience, loss and expense.

And the Defendant claims:

(1) A declaration that the Defendant is an equal partner with the Plaintiff in the ownership of the said house;

(2) A declaration that the Plaintiff is not entitled to refuse or deny the Defendant's lawful invitees access to the said house;

(3) An injunction restraining the Plaintiff from denying the Defendant's lawful invitees access to the said house;

(4) Costs;

(5) Further or other relief."

In so far as the matters remain unresolved - I find as follows:-

1. THE HARBOUR VIEW LAND

This was purchased by the Plaintiff with assistance by way of Mortgage absolutely without any financial contribution from the Defendant who has allegedly refused and/or neglected to take steps to have her name removed from the title. This is not cut and dried however hence my use of the term allegedly because on the one hand I find that it is a fact that the Defendant did say she would not sign the document prepared by Mr. Butler until she had been repaid \$6000 which she alleged was loaned to the Plaintiff - but on the other hand I find that the Plaintiff has maintained possession and control of the document at least since 1988 and so the Defendant was not actively refusing or neglecting to sign from 1988 to date of trial. Notwithstanding this state of affairs however I find that there is no good reason why the Plaintiff should not forthwith have the Title to the Harbour View Land transferred to him absolutely free of any encumbrances and the two Declarations sought as follows are granted:-

(1) A Declaration that the Plaintiff is entitled to

the entirety of the said land at Harbour View Housing Development as sole absolute and beneficial owner in unincumbered fee simple in possession.

(2) A Declaration that the Defendant holds an undivided one-half share estate or interest in the land at Harbour View Housing Development aforesaid in Trust for the Plaintiff.

It is further ordered that the Defendant shall forthwith execute such document as is presented to her through her Solicitor to give effect to the Declarations that is, transfer of her undivided half share in the Harbour View Property to the Plaintiff.

2. THE LA GUERITE PROPERTY

The uncontradicted evidence is that the Defendant bought the original wooden house and subsequently the land on the advice of her mother with her own funds absolutely. Indeed the house was bought when the Plaintiff was still an unemployed minor and he lived in the house as a child with his mother.

The credible evidence regarding the La Guerite Property is therefore that when the house and land were originally bought the Defendant was the absolute legal and beneficial owner.

With regard to the Plaintiff he agreed that his discussion with the Defendant and their arrangements as referred to above and contained in paragraph 4 of his Statement of Claim was entered into before his name was placed on the title in respect of La Guerite.

There was much evidence and considerable cross-examination by both sides in relation to the amount of money spent by the Plaintiff on several occasions to repair and or remodel the house at La Guerite after the initial discussion where the Defendant placed the Plaintiff's name on the Title in return for his agreement to repair the house. The Plaintiff claimed that after the initial repairs done by him he had the house repaired and/or remodelled on other occasions. The Defendant does not dispute this but there is no evidence to suggest that the Defendant ever agreed by word or deed that the share of the Plaintiff in La Guerite should be anything more than one half and the several witnesses called by the Plaintiff to support his case regarding the work done on the house and the money spent do not affect the determination of this issue.

The Plaintiff called Mr. Nassibou Butler of Counsel in

support of his case but Mr. Butler's evidence supported the Defendant in that he agreed that she bought the land from Government when the Plaintiff was "**fairly small**". He was not able to say however how she (Defendant) acquired the house initially.

With regards to Mr. Butler's evidence - the Defendant waived

her right of privilege to confidentiality of discussions had with him while he was her lawyer.

Mr. Butler said that in 1977 the Defendant visited his

Chambers and informed him that the house at La Guerite needed more repairs - that she did not have money to do repairs, that the Plaintiff said he had money and would assist her with repairs on condition that his name was put on the Certificate of Title.

Mr. Butler said that as a result of that information from the Defendant he prepared the necessary document to have the Plaintiff's name placed on the Certificate of Title for the La Guerite property - The Plaintiff and Defendant became joint tenants of the property but neither the Plaintiff nor Defendant discussed with him the proportions in which the property was held nor was it apparent to him, according to his evidence, in what shares or proportions if any they (Plaintiff and Defendant) owned the property.

The Defendant's evidence in regard to the La Guerite

property in particular is that - "I said to him - the house at La Guerite needs some repairs done to it. I am presently tied up in St. Thomas". I was thinking about purchasing a house as soon as divorce finalised. Everybody is using house in St. Kitts and expense is all mine. "You do work that needs to be done and I will put your name on the Deed and give you half interest property". The Defendant said the Plaintiff responded "That's fair" and further she said the Plaintiff said "Why don't we just knock down the wooden area and make the whole house concrete. While doing that I can dig out and we can get a downstairs also". The Defendant continued that at this stage she said "Well half (of the) house is yours and while you are at it if there are any repairs needed to be done just finish it".

I accept the Defendant's evidence in regard to La Guerite in

its totality. The evidence of the Plaintiff directly and through his witnesses as to the extent of the work he caused to be done on the house is also accepted but there is no evidence that the

Plaintiff ever requested or that the Defendant ever agreed that the Plaintiff's share in the La Guerite property should be increased to more than one half.

Both Counsel addressed particularly in regard to the La Guerite property and I shall consider the authorities.

Gissing v. Gissing (1970) 2 A.E.R. 780

This case is too well-known to make it necessary for me to set out the facts. I will content myself with noting that this was a case to do with former spouses - where the wife had not contributed directly or indirectly to the acquisition of the matrimonial home which became the subject of dispute as to how it was beneficially held though legal Title was in the husband

alone. I adopt entirely the reasoning of Lord Morris of Borth-y gest that:

"The Court does not decide how the parties

might **have** ordered their affairs: it only **finds how they did. The court cannot devise arrangements which the parties never made.**

The Court cannot ascribe intentions which the parties in fact never had. Nor can the ownership of property be affected by the mere circumstance that harmony has been replaced by discord".

The underlining is my own and is particularly apt in the

instant case where the Plaintiff has admitted that the arrangement regarding the placing of his name on the Title Deed for La Guerite was done at a time when there was a very close relationship between the Plaintiff and Defendant (brother and sister) but that they do not now see "eye to eye" (my words) whether this be caused because of the Defendant's comments regarding the Plaintiff's involvement with Elvira or because of the Defendant's refusal to offer accommodation to Plaintiff and his Wife and all their children after Hugo rather than to him and his children alone.

This mere circumstance of disharmony cannot affect the arrangement or lack of arrangement.

Gissing v. Gissing was decided following Pettit v Pettit (1969) 2 A.E.R. 385 and so I do not consider it necessary to deal therewith.

Mr. Byron next referred to what he termed the leading case on severance.

2. Williams v. Bensman (1861) 1 J & H 546 - 561 at p.526 and relied thereon to establish strong corroboration for the Defendant's contention that there was a common intention between the parties to own La Guerite in equal shares.

3. Gonzalves v. Fernando (1961) 4 WIR 55

dealt with the enforcement of a contract (or agreement) between the parties who were sister and brother and the name or names on the Title to the legal estate in the land was not a matter of moment.

4. Thomas v Fuller-Browne (1988) 1 Family Law Rev 237 (Butterworth Family Law Service Vol. 1)

which dealt with the intent of the parties at the time the property was acquired.

5. Goodman v. Gallant (1986) 1 A.E.R. 311

In this case - briefly there was a conveyance to Plaintiff and Defendant who then occupied a house as joint tenants on trust for Sale. The house had formerly been owned by the Plaintiff and her husband in equal shares though title was in the husband alone.

When the Plaintiff and Defendant came to a parting of the ways the Plaintiff argued that since she had owned one half share and her husband one half - that which was held by her and the Defendant in equal shares was the half share previously owned by her husband and so she was entitled to three-quarters share and the Defendant to quarter share. The Court of Appeal held that where a conveyance into joint names contained an express declaration that the parties were to hold the proceeds of the sale of the property on trust for themselves as joint tenants then on severance of the tenancy a tenancy in common in equal shares was created.

Taking all the evidence and the authorities into

consideration including - *Lehrer v. Gordon* 7 **WIR** 247 which dealt specifically with Agreement between the parties - as in the case at Bar - I hold that all the relevant evidence both from the Plaintiff and his witnesses and from the Defendant satisfies me that the Defendant agreed to give her brother half share of the property in consideration for his undertaking repairs when she was not able to do so. There is no evidence that the issue was ever again discussed and the Plaintiff by doing additional repairs and expending additional amounts on the property cannot unilaterally take unto himself a larger portion than that which it was agreed between him and his sister the Defendant that he should have.

I therefore hold that the La Guerite house is owned by the Plaintiff and Defendant in equal shares, that it should be valued by a valuer agreeable to both sides, that either party be at liberty to buy the others share within 12 months from the date that the valuation report is submitted failing which the property is to be offered to the public for sale and the net proceeds divided equally between Plaintiff and Defendant when so sold.

Declarations 1 and 2 sought by the Defendant in her counterclaim are therefore granted thus:-

1. The Defendant and Plaintiff own the La Guerite house as tenants in common in equal shares.
2. The Plaintiff shall not refuse or deny the Defendant's invitees access to the house.

Both parties have claimed damages. I have given anxious thought to this but in the final analysis I refuse to award damages to either side for the following reasons:-

!. I am not satisfied on the evidence adduced before me

that it could reasonably have been within the contemplation of the Defendant that a failure by her to execute transfer of the half share in her name to the Plaintiff in respect of the Harbour View land

would have involved him in expenses of the nature alleged regarding the Plaintiff's alleged proposal to purchase land at Franklands.

2. Any damage suffered by the Defendant when the Plaintiff

ordered her invitee off the La Guerite property was minimal and in deed is not really quantifiable.

I accordingly enter Judgment for the Plaintiff stated above regarding the Harbour View property and I similarly enter Judgment for the Defendant on her counterclaim as stated above re the La Guerite property.

I make no Order as to costs.

Velma L. Hylton, Q.C.

Puisne Judge

5th May, 1995