IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT

A. D. 1990

(Civil)
Suit No. 68 of 1989

BETWEEN:

MILDRED WILLIAMS — PLAINTIFF

AND

LILIAN CAREY — DEFENDANT

Before The Honourable Mr. Justice Lloyd G. Williams, Q.C.
(IN COURT)

Appearances: Sir Probyn Inniss and Angela Inniss for the Plaintiff
Henry Browne for the Defendant

1990, March 19, 20 and 21

J U D G M E N T

WILLIAMS, J.

By his Will dated 20th day of November, 1984 Carl Carey devised his land and the wall-house thereon situated at Ponds Pasture to Mildred Williams for her own use and benefit.

Carl Carey died on the 21st day of October, 1987 without having altered or revoked his said will, and on the 7th day of March, 1988 Lilian Carey widow of the late Carl Carey being unaware of her husband's will at the time obtained a Grant of Letters of Administration of the estate of her late husband.

In or about October, 1989 the plaintiff was given a copy of an unprobated will by Charles Wilkin, a Solicitor of the La Kelsick,Wilkin and Ferdinand. The late Frederick Edgar senior partner of the said law firm and was the sole exec said will of Carl Carey; the plaintiff being the sole bene

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under the will.

The plaintiff's claim against the defendant is as follows:-

1. A declaration that the defendant is not entitled to occupy the plaintiff's land or the dwelling house thereon.
2. An order that the Letters of Administration obtained by the defendant be revoked.
3. Possession of the said land and dwelling house situated at Ponds Pasture, Basseterre.
4. All rents and profits in respect of the said property from the death of Carl Carey, deceased, and damages.

The defendant in her defence contends that the house and land in question was owned by her and her late husband Carl Carey as joint tenants during their joint lives and that during her husband's life time it was agreed between them that upon the death of both of them the said land and house thereon would pass to their children in equal shares.

She claimed that as such Carl Carey had no interest in the said property which could properly be devised by his will inspite of the fact that the certificate of title to the said land was solely in Carl Carey's name.

The case for the plaintiff is that she and the late Carl Carey had an intimate relationship from about 1953 until about 1958. Out of that relationship she bore him two children a girl and a boy. One born on the 8th November, 1954 and the other born on the 7th October, 1957. That the relationship started up again in 1981 and continued until shortly before Carey's death.

She claimed that Carl had told her if anything happened to him Mr. Kelsick the Solicitor would call her. Mr. Kelsick who is now deceased having died on the 24th July, 1988 did not call her. However, some time in 1988 after the death of Mr. Kelsick she received a message from Mr. Charles Wilkin a member of the Law Firm of Kelsick, Wilkin and Ferdinand. As a result she went to see Mr. Wilkin and was handed the will of Carl Carey in which he devised all his real and personal property whatsoever and wheresoever situated to her absolutely.

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The evidence disclosed that the only real property which Carl Carey possessed was the land and dwelling house thereon situated at Ponds Pasture, Basseterre, St. Kitts.

The case for the defendant is that she and Carl Carey were married on the 30th June, 1960. That before marriage she bore him a child and after marriage they had three other children.

She stated that she encouraged her husband to buy a plot of land when he was reluctant to do so. That eventually a house was built on the said land and in about July, 1971 they went to live on the said property after a house was built on it. This is the house and property which is now the subject of this action.

She said the price of the land was $700.00 and the title to it was put solely in the husband's name because according to her he said she was not working and she was not going out to work.

She said her mother sent her 2000 Guilders from Aruba and that the materials for building the house was paid for out of her money and that of her husband.

She stated that her brother-in-law Albert Francis who is in the trucking and block business transported all the aggregate, sand and stones for the building of the house free of charge as a benefit to her, however no figure was given as to how much in terms of money value this assistance amounted to. Albert Francis in his evidence confirmed the evidence of the defendant that he did perform this task.

She said that after the death of her husband she did certain repairs to the house amounting to over $12,000.00 a portion of which sum came from a loan of $7,000.00 from the Royal Bank of Canada and that she paid her husband's funeral expenses which amounted to $1,696.00 U.S. Dollars.

This is a most unfortunate case, where the deceased husband by his will has left all his real and personal property to his mistress and nothing for his wife and children. In England there are laws to rectify this sort of situation but in this jurisdiction no such laws exist.

It is being suggested by Counsel for the defendant that the property was owned by the defendant and her husband as joint tenants. I can find no factual or legal basis to support such a proposition on the facts of this case. The ingredients necessary to support such a claim is absent.

Counsel for the plaintiff submitted that for a joint tenancy to be created four unities must be present. Namely, unity of possession, interest, time and title. In support he cited Megarry & Wade 5th Edition pages 419 - 422. He argued that those four unities do not exists in this case and further that the certificate of title was issued under the Title By Registration Act Cap. 279 and on the face of it such a title bears testimony to the ownership of the party in whose favour it is issued; that is, Carl Carey.

Counsel further submitted that it may reasonably be inferred that if indeed a joint tenancy existed, then there would have been no need in law for the defendant to make application for Letters of Administration as the property would have automatically passed to her.

The proposition of joint tenancy as put forward in this case is a nebulous one, it is not just a matter of calling a tenancy joint tenancy it takes a great deal more than that. The submission in my judgment is untenable.

It is always difficult in these matters to determine certain facts in relation to issues of which only two persons have knowledge but when at the time of the trial only one of them is available to give evidence because the other is deceased. As such I am unable to say whether the reason given by the defendant as to why the title to the land was put solely in the husband's name is so or not. I am unable on the evidence before me to find the common intention which is being sought by the defendant with respect to this aspect of the matter.

I do not agree with the submission of Counsel for the defendant that the absence of a reply by the plaintiff to the defendant's defence is an admission of the defence and as such puts the plaintiff out of Court as per Order 53 rule 13(1). The plaintiff's claim is based on the will of Carl Carey. The defendant's claim is based on joint

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tenancy which assertion to put it at its best is extremely nebulous. In my judgment the failure of the plaintiff to reply to the defence was not an abandonment of the plaintiff's claim or an admission of the defendant's claim. In my view a reply was not necessary in the circumstances; in any event Order 53 rule 13(1) must be read in conjunction with Order 18 rule 14. I do not accept the submission of Counsel on this point. In any event the defendant would still be required to prove her case with respect to joint tenancy and in my judgment she has failed to do so.

The defendant in her evidence said that her mother had sent her 2000 Guilders from Aruba, that her money and that of her husband went towards the purchase of the land and later towards the building of the house in addition to the assistance given by Albert Francis with regard to the transportation of sand and stones. Even assuming that she made some contribution the evidence with respect to same was somewhat vague, nebulous, unclear and imprice. There was no evidence as to the amounts contributed or any quantum put on the assistance given by Albert Francis on her behalf to which of course she would have been entitled to benefit.

In my judgment rather than relying almost totally on joint tenancy which claim was in any event of questionable merit there ought to have been an alternative claimed in the pleadings based on her contribution claiming a beneficial interest in the property and a resulting trust thereby with specific evidence at the trial to support it.

Counsel for the defendant has cited Halsbury's Laws of England, Third Edition, Volume 19, paragraph 1372 in aid in a general way in dealing with circumstances where the property is in the name of the husband solely and the wife has contributed to the purchase of same, as to what are her rights. In my judgment the evidence led by the defendant is not of a sufficiently clear, precise and cogent nature that would afford her the assistance of that paragraph in Halsbury's.

I repeatedly during the trial brought to the attention of Counsel for the defendant the difficulties he was likely to face because of the state of his pleadings.

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I see no merit whatever in the submission of Counsel for the defendant that the testator did not specifically name the property in his will that he was devising to the plaintiff. From the evidence it is clear that the only real property owned by the testator was the property at Ponds Pasture. In any event the will stated "I give devise and bequeath all my real and personal property whatsoever and wheresoever situated to Mildred Williams . . . absolutely". I therefore reject the submission.

I agree with Counsel's submission that the will of 1984 could not have changed interests which existed in 1971 but the burden to establish that the defendant had an interest in the land or house thereon in 1971 is upon the defendant and in my judgment the defendant has failed to discharge that burden.

A number of authorities were cited by Counsel for the defendant but with all due respect to Counsel those authorities are not on all fours with the case before me. Each case has to be determined on its own facts.

I am satisfied that the defendant expended money to improve the house after the death of her husband and before she was aware that he had devised the said property by his will to the plaintiff. The defendant is properly entitled to be refunded such sums expended but there is no claim before me with respect to that, she is also entitled to be reimbursed from the estate the amount expended by her for the funeral expenses of her husband. There is also no claim before me with respect to that. I am therefore unable to make any order concerning these items.

I have great sympathy for the defendant and her children and it is with a great deal of reluctance that I make the order I am shortly about to make.

I do not consider that the circumstances and the justice of this case warrants the defendant being required to pay any rent or account to the plaintiff for any profits with respect to the said premises. I am also of the view that the defendant is entitiled to a reasonable time to make alternative arrangements before giving vacant possession of the property to the plaintiff.

It is ordered as follows:-

1. It is declared that the defendant is not entitled to oacupy the land or the dwelling house thereon.

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2. That the Letters of Administration obtained by the defendant on the 7th day of March, 1988 be revoked forthwith.

3. That possession of the said land and dwelling house situated at Ponds Pasture be delivered up to the plaintiff not later than the 30th September, 1990.

4. That the claim for rents and profits with respect to the said property are refused as are any claim for damages.

No order as to costs.

L. G. Williams, Q.C.
Puisne Judge

3rd July, 1990