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IN THE COURT OF APPEAL

ANTIGUA:

CIVIL APPEAL NO. 3 of 1976

BETWEEN: LLEWELLYN TITTLE - Appellant

Vs.

VIRGINIA TITTLE - Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: S.T. Christian for Appellant
T.H. Kendall for Respondent

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1976, July 23 and 26, Oct 29

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J U D G M E N T

PETERKIN J.A.

This is an appeal by the husband, Llewellyn Tittle, from the order of Nedd, J. made on 10/3/76 as the result of a hearing of an application by the wife, Virginia Tittle, under section 19 of the Married Women's Property Act, (Cap. 352 of the Laws of Antigua), whereby the learned Judge held as follows:-

(1) That the wife was entitled to the entire beneficial interest in the dwelling house situate at Martins Village, subject to the payment into Court by the wife to the use of the husband of the sum of $3,040.00:

(2) That the wife was entitled to the entire beneficial interest in the dwelling house situate at Cashew Hill;

(3) That certain articles and appliances stated were solely the property of the wife; and

(4) That the wife and the husband were joint owners of a radiogram and television set.

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The facts as found by the trial judge are stated in the judgment. The parties were married in June, 1963. Prior to this they had been lovers for some time and she had borne him a child. They decided to build a house in 1962. The wife provided the money with which the materials were purchased. The husband who was a master carpenter provided the skill and labour. The house was erected at Martins Village, and later became the matrimonial home. In 1965 the need arose to extend the house because of the children. The wife provided the money for materials from her wages as a hotel maid. The husband provided the skill and labour, and the sum of $40.00. In 1971 the house was further enlarged, again with money provided by the wife and time and labour provided by the husband. Altogether the husband has put a value of $8,000.00 on his labour only in respect of this house. The wife claims that its present value is $30,000.

Construction on the house at Cashew Hill started in 1967. It was the wife's idea to build it for rental to assist with the children's education. It was completed in 1969. The wife contributed about $4,000 in money. The husband's contribution was his time and labour. He built the house. She has estimated its present value at $15, 000. The learned judge found that the husband was entitled to a beneficial interest in this house to the extent of his contribution by way of labour which he evaluated at $3,000.00, but went on to state that the husband had paid himself in full out of the rents, and that the beneficial interest in the house therefore now rested solely in the wife.

A number of items of furniture were also claimed by the wife. The learned judge apparently preferred her

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evidence to that of the husband, and has awarded her most of the furniture.

The marriage failed and divorce proceedings were brought by the wife in April, 1974, but the petition has not yet been heard.

Counsel for Appellant has argued that, even on her own figures given in evidence, the total spent by the wife on the house at Martins Village was $4,500.00. He then went on to submit that the agreement to build in 1962 was in contemplation of marriage, and that this was borne out by the fact that the house had become the matrimonial home when they married in 1963. Counsel also cited a number of cases to the Court, among which were Smith v. Baker, 1970 2 A.E.R. 826, and Ulrich v. Ulrich, 1968 1 A.E.R., 67. He further submitted that both houses should be declared to be jointly owned in equal shares by the parties, and so should the furniture.

Counsel for Respondent on the other hand has asked the Court to find that the judge decided correctly on the facts, and went on to submit that there was nothing on which to draw an inference in respect of the matrimonial home; that the case was on all fours with that of Mahabir v. Mahabir, 7 W.I.R., 131, which he cited, and that consequently the beneficial interest in both houses rested solely in the wife.

I am afraid that I cannot agree with this view. In the case of Mahabir v. Mahabir the wife's father had purchased the property out of his own resources in the name of the wife with the intention of benefiting her alone. The husband repaired, repainted and maintained the home, landscaped and improved the grounds, and built a tennis Court. Six or seven years after the purchase

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the house was demolished and re-built at a cost of $53,000. Once again the entire cost was provided by the father from his own resources and he did so on the footing that the property belonged and would continue to belong to the wife alone. The Court of Appeal confirmed the conclusion of the trial judge that the beneficial ownership of the property was in the wife alone. In my opinion the case of Mahabir v. Mahabir is not on all fours with the instant case.

With regard to the house at Martin's Village, it was built at a time when they were courting. She had borne him a child, and, on her own evidence, they were still in love. She contributed the money. He contributed time and labour. One year later they were married, and it became the matrimonial home. I am of the view that this home was acquired and built by the joint efforts of both of them as a continuing provision for the future. It was a joint enterprise. In the circumstances, I would refer to the words of Denning, M.R. in the case of Ulrich v. Ulrich mentioned above:-

> "In the first place, I think that money contributed by a man and woman before marriage, with a view to setting up a matrimonial home, are in the same position as moneys contributed by them after marriage. They are contributed to the purchase of property which is intended to be a family asset. When the marriage takes place, it becomes a joint asset belonging to both in equal shares. Such is the position, at any rate, if and when the marriage takes place. It might be very different if there was no marriage at all. If the marriage never took place, the whole thing might have to be cancelled. There would probably in those circumstances be a resulting trust in the proportions in which they contributed. When the marriage takes place as contemplated, however, I am satisfied that the moneys stand in the same position as moneys contributed after the marriage."

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In short the case stands on a par with all the marriage cases.

The house at Cashew Hill was started in 1967 and completed in 1969 while the marriage still subsisted. It was built to help with the children's education by renting it out. The wife contributed money. The husband contributed time and labour. As in the case of the home at Martin's Village, he built this house at Cashew Hill by the sweat of his brow. Again in my view it was built by the joint efforts of both of them as a joint enterprise.

At this stage of the marriage if the parties were asked the question: 'To whom do the houses belong?' They would almost undoubtedly have said: 'Ours, of course, equally.'

Accordingly for the reasons stated I would allow this appeal. I would reverse the order made, and declare both houses named to be jointly owned by the parties in equal shares. Likewise I would declare all household items acquired by them during the subsistence of the marriage to be their joint property in equal shares, save and except the items conceded by affidavit to be the property of the one spouse or the other.

(N.A. Peterkin)
JUSTICE OF APPEAL

DAVIS C.J:

I agree that this appeal should be allowed, but should like to express my reasons for doing so.

Section 19 of the Married Women's Property Act, Cap. 352 of the Revised Laws of Antigua, provides that "In any question between husband and wife as to the title to or possession of property, either party, may apply by summons or otherwise in

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a summary way to any judge; and such judge may make such order with respect to the property in dispute and to the costs of and consequent on the application as he thinks fit."

This section provides a summary and relatively informal forum which can sit in private for the resolution of disputes between husband and wife as to the title to or possession of any property, whether real or personal. It is available while the husband and wife are living together as well as when the marriage has broken up. It is, in my view, a procedural section, and does not prevent actions between spouses for declaration of rights. In determining a question of title to property in proceedings under this section, the Court must not apply any different principles from those which it applies to the same question in any other proceedings. It must decide them according to law.

Section 17 of the English Married Women's Property Act is similar to the provisions of section 19 quoted above, and several decisions of the Court of Appeal seem to suggest that section 17 gives the Court a free hand to do whatever it thinks just as respects the title to family assets. Indeed, in the case of Hine v. Hine, 1962, 3 A.E.R. at page 347, Lord Denning said this: "It seems to me that the jurisdiction of the Court over family assets under section 17 is entirely discretionary. Its discretion transcends all rights, legal and equitable, and enables a Court to make such orders as it thinks fit." But the House of Lords in the case of National Provincial Bank Limited v. Ainsworth, 1965, 2 A.E.R. at page 472 thought otherwise and it is now established that where proprietary rights of spouses in any property which is a family asset can be clearly ascertained the Court has no jurisdiction to vary agreed or established titles.

It is not surprising, therefore, that the Court of Appeal of Trinidad and Tobago, in the case of Mahabir v.

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Mahabir refused to make a declaration in favour of the husband giving him a beneficial interest in his wife's property on the ground that he had expended large sums of money in repairing and improving the matrimonial home.

Now, what is the evidential position in this case? I shall deal first with the financial element. The respondent was at pains to show that she was the breadwinner of the family. She stated that she was at all material times in regular employment earning good wages, and that the appellant was a "no-good man." According to her you could find him sitting down under Bata Shoe place every day. Accordingly, her evidence was to the effect that she provided all the money which went into the erection of the house at Martins Village and later all the monies which went into its repair and expansion except for $40.00 which the husband provided. In the case of the erection of the Cashew Hill house, her evidence is to the same effect - she provided all the money. The husband (the appellant) on the other hand, said in his evidence that "both of us provided the funds for the building of the house at Martins Village," and further that he provided the funds for the construction of the house at Cashew Hill. The appellant is a master carpenter and taxi driver, and gave evidence of the construction jobs which he did during the relevant period. The learned judge accepted the evidence of the respondent and said this at page six of the record:

> "The contrast between the evidence of the plaintiff and that of the defendant is strongly marked and this contrast is not to the advantage of the defendant. The plaintiff, in asserting that she contributed this, that or the other amount was able to say the amount

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> was able to say the amount paid by her and its source. The only figure quoted by the defendant is the sum of $560 which he said he used to buy materials. He has been able to give no figures relative to the two extensions to the house."

Having regard to the evidence brought out in the cross-examination of the respondent to which I shall refer in a moment, I think this was an unreasonable finding of fact. First of all, an exercise in simple arithmetic would show that the wife, whose basic wages ranged from $8 to $12 a week during the periods when she worked as a maid at the hotels (and she was often out of work), and even allowing for reasonable gratuities, could never have earned - to say nothing of saving - the amount of money which must have gone into the construction, expansion, painting and establishing the home at Martins Village. The same thing applies to the house at Cashew Hill. Moreover, the husband said she was out of work during a part of the relevant period and it is significant that she said in cross-examination "During 1963 and 1966 my mother gave me what I wanted." The wife claimed that part of the money which went into the construction of the two houses came from the money box. But again, under cross-examination she said, "If the defendant (meaning the appellant) gave me any money to provide food I took $5.00 from it and put it for box money." The question which immediately arises is whose saving would the box money be? And I have no hesitation in replying, family savings. It must also be remembered that the respondent admitted that the appellant supported her and that at one time they had a joint bank account. It is clear therefore, that the picture which the respondent attempted to paint concerning the appellant, was not a true picture.

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It may well be that the wife was an impressive witness, a calculating individual, while the husband was just an ordinary family man, doing his bit for the welfare of his family and not caring to make even a mental note of the financial contributions which he made towards the building of the two houses.

What other contribution did the husband make? It is common ground that he is a master builder and that he designed and built the two houses. The respondent tried to belittle his efforts by stating that her brother worked along with him, but it was brought out in cross-examination that the brother was 16 years of age in 1961 and was then only learning the trade of a carpenter. In the circumstances of this case can it be said that in building these two houses the husband was simply indulging in a hobby - and in the case of Martins Village house - to make the home pleasanter for their common use and enjoyment - with no other intention as to any beneficial interest in the house? The trial judge did not think so and I agree with him. Where I differ from him is on the value which he placed on the appellant's contribution in skill and labour, and, as I have said before, in his finding that the husband made no financial contribution other than $40.00

From what I have said it should now be clear that this was a case of a joint enterprise by both spouses, each making his or her contribution, and it is reasonable for a Court to impute to them a common intention that their respective contributions either in cash or labour should entitle both of them to a proprietary interest in the property. It cannot be said that the evidence is clear and that a definite value or definite proportion can be put on the contribution made by either party, and in such a case I would hold that equality is equity.

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For the reasons I have stated I would allow the appeal. I agree with the order proposed in the judgment of Peterkin J.A. in regard to the two houses and also to the household effects, and I would order that the parties bear their own costs, both here and in the Court below.

(Maurice Davis)
CHIEF JUCTICE

I also agree

(E.L. St. Bernard)
JUSTICE OF APPEAL