

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 10 of 1984

BETWEEN:

NELLIE SHEARMAN	- Defendant/Appellant
and	
EPHRAIM DAVIS by his Agent, EGERTON CRICK	- Plaintiff/Respondent

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Williams (Acting)

Appearances: Mr. S. Commissiong for the Defendant/Appellant
Mr. E. Mounsey for the Plaintiff/Respondent

1984: Dec. 12,
1985: March 25.

JUDGMENT

BISHOP, J.A.

In an action against Norman and Nellie Shearman, Ephraim Davis, through his attorney Egerton Crick, claimed possession of a parcel of land with dwelling house thereon at Dumberton Estate, which he alleged he had purchased for \$20,000.00 from Norman Shearman on the 6th February, 1978, as evidenced by a deed of sale. He also claimed mesne profits at the rate of \$600.00 per month until possession is delivered up and damages.

Prior to the sale the said property was occupied by Norman Shearman and his wife Nellie, as the matrimonial home.

The Statement of Claim showed that on three different and specified occasions Nellie Shearman approached Egerton Crick and asked him to buy the property from her husband who was at all material times, the owner of the premises and entitled to possession of it. Then it was asserted:-

/17. Soon after.....

- "7. Soon after the sale aforesaid of the said premises, the first Defendant vacated the said land and the matrimonial home, and went to live at Yanbou on $\frac{1}{2}$ acre of land with a dwelling house situate thereon, which according to the first defendant, he had purchased with the proceeds of sale of the said premises.
8. Since the 6th February 1978 to the present time, the second Defendant has continued to occupy the said premises despite several requests from the Plaintiff for her to vacate same and also despite her promise to vacate same soon after the 6th February, aforesaid."

Although it was admitted on the pleadings that on the 11th November 1979 the learned Magistrate sitting in the Mesopotamia Court ordered her to deliver up the premises to Egerton Crick, it was also made clear that in August 1980 she had appealed against the decision but that appeal had not been concluded at November 1982 when this action was filed. In the absence of any explanation the interval of more than 2 years between the date of the appeal and the date of hearing of an appeal of this kind seemed to me to be unduly long. I should add that although the pleading referred to the decision, there was quite properly, in my view, no evidence led in respect of the allegations, before the Magistrate.

Norman Shearman took no part in the matter, but his wife, in her defence filed on the 19th November 1982, alleged that she has substantial beneficial interests "not merely as wife but as a contributor to the acquisition of the said property"; and further in the pleading according to paragraph 2,

".....the plaintiff allegedly bought the said property from the first defendant along, a transaction to which the second defendant was never a party. She further claims that the plaintiff was well aware of her rights of occupation as wife of the first defendant at the time of the alleged sale and that he never once enquired into her rights as occupant. She therefore says that her occupation of the said property at the time of the alleged sale was notice to the whole world of her rights in possession."

/Nellie Shearman.....

Nellie Shearman also denied that she never approached Egerton Cairns about purchasing the property in question or any other property. She alleged that Ephraim Davis through his attorney or agent bought the property with actual knowledge of its occupation by her and that at no time did she agree with anyone to sell her beneficial interests in the property; nor did she agree to vacate the property at any time. She denied that Ephraim Davis and his agent were entitled to possession of that property.

By way of Counterclaim - and not by way of Defence - Nellie Shearman alleged that:-

"the plaintiff.....cannot now claim to have bought her beneficial interests in the said property. She says further that the first defendant had no claim of right to sell her interests in the property and that she being a part owner of the same and not being a party to the alleged contract of sale between the plaintiff and the first defendant the said contract is of no legal effect insofar as her interests in the said property are concerned."

Nellie Shearman asked the High Court to cancel the contract and/or the deed of conveyance.

In reply to the Defence it was asserted that any interest which Nellie Shearman has or may have had in the property at the time of the sale was an interest in the purchase price; and that insofar as her alleged rights of occupation as wife were concerned, they were terminated at the time of the sale, of which she had prior knowledge.

The Defence to the Counterclaim was, in effect, a repetition of the relevant allegations already made in the Statement of Claim, and then it said:-

".....that the first defendant as registered owner of the said premises was entitled to enter into a valid contract for the sale thereof."

/After hearing....

After hearing the evidence of Egerton Crick on the one hand and of Nellie Shearman and her witness on the other hand, the trial Judge gave judgment for the plaintiff and ordered the defendant to deliver possession of the property. No time was stated in which to do so.

In his judgment the learned trial Judge pointed out that the property stood registered in the name of Norman Shearman alone. He analysed two cases - WILLIAMS & GLYN'S BANK LTD. v BOLAND and ANOTHER reported in (1980) 3 W.L.R. 138 and (1980) 2 All E.R. 408 and WILLIAMS & GLYN'S BANK LTD. v BROWNE and ANOTHER reported also at (1980) 2 All E.R. 408 - on which great emphasis and reliance were placed by counsel for the plaintiff; and the Judge stressed that these cases required an interpretation of provisions of the Land Restriction Act 1925 of the United Kingdom. Then he said this:-

"We have no similar legislation in St. Vincent and the Grenadines as far as I am aware; so that we cannot import into our conveyancing laws provisions of an English statute which are not operative here. It may well be that the legislature should indeed take the opportunityto protect wives who in the main make large contributions to the holdings especially in that of the matrimonial home, but until and unless this is done I do not see how a court can break with a long conveyancing history and procedure and make what is new law."

Nellie Shearman appealed to this Court to set aside the judgment of the learned trial Judge and order a new trial because the learned trial Judge did not make a finding of fact; alternatively that this Court enter judgment in her favour. Three grounds of appeal were given: 1. The learned trial Judge was wrong in law in referring to the Land Registration Act 1925 (U.K.) when it was admitted by both the defendant/appellant and the plaintiff/respondent that the Act had no application to the State of St. Vincent and the Grenadines. 2. The learned trial Judge erred in law in holding that because the property which formed the subject matter of the proceedings was registered in the name of the husband, Norman Shearman, he could deal with third parties by transferring the legal and beneficial interests therein without the knowledge and consent of the defendant/
/appellant.....

appellant. 3. The learned trial Judge completely failed to take into consideration the common law doctrine of notice with regard to the occupation of the matrimonial home at the time of the sale, as well as the protection given to a wife under the provisions of the Matrimonial Causes Act of 1973.

Learned counsel for the appellant dealt with the first and third grounds of appeal together. He expressed the view that reliance could not be placed on the Land Registration Act 1925 of the United Kingdom and submitted that sections 23, 24 and 25 of the Matrimonial Causes Act 1973 were pertinent. In counsel's opinion the real question that fell to be answered by this Court was: "whether a wife who has a beneficial interest in the matrimonial home by virtue of the fact that she contributed to its acquisition has an interest in that property against a purchaser who seeks recovery of possession from the spouse who had no notice of that sale?" Mr. Commissiong pointed out that in the instant case Norman Shearman and Nellie Shearman were still married though they were living apart; and he urged that on the evidence it was shown that she had a legal right and so he could not sell the house which was the matrimonial home and whose acquisition had been contributed to by her. Counsel also cited the case NATIONAL PROVINCIAL BANK v AINSWORTH (1965) 2 ALL.E.R. 472 and submitted that in St. Vincent and the Grenadines the common law was to be applied as there was no legislation similar to that of the United Kingdom. If I may quote him: "In this case we are not relying on the United Kingdom legislation at all; we are going strictly on the common law". It seemed from what learned counsel for the respondent said to this Court - to which I shall advert later - that this statement by Mr. Commissiong represented a change of position from that adopted at the trial.

Learned counsel for the appellant also urged that it was shown that Nellie Shearman had a beneficial interest in the property and he submitted
 that the....

that the purchaser of the property took it subject to the wife's rights; further, according to counsel, the purchaser had a duty to ascertain, before purchasing, what were the rights of the wife who was still in occupation.

Now while counsel emphasised at one point of his address that he was not saying that the sale of the property was not a good sale, if I understood him correctly at a later stage of that address after referring to a passage from the 3rd edition of Megarry and Wade on the Law of Property (at page 119) he contended that in the light of that passage it was a bad sale. That passage formed part of a section dealing with the Nature of Equitable Rights and was as follows:

".....the cardinal maxim in which is expressed the true difference between legal and equitable rights:

"Legal rights are good against all the world; equitable rights are good against all persons except a bona fide purchaser of a legal estate for value without notice, and those claiming under such a purchaser"."

Learned counsel also relied on the case *WATCHEL v WATCHEL* (1973) 2 W.L.R. 366 as indicating the rights that are acquired by a wife, and he submitted that on the basis of this case the Court should find that there was a beneficial interest.

Counsel for the respondent submitted that from the nature of the case before this Court two questions emerged for answers: What he described as the pivotal question was this: "Under what conditions was a wife who continues in occupation of the matrimonial home, registered solely in the name of her husband, entitled to remain in that home after it had been sold to a bona fide purchaser for value, such wife staying on in the home against the wishes of that bona fide purchaser?" The second question was: "Whether or not the wife (appellant) has or had in
/the property.....

the property any beneficial or proprietary interest which could legally affect a bona fide purchaser for value without the latter's knowledge or consent?"

Learned counsel for the respondent analysed the evidence as well as the Williams & Glyn's cases allegedly relied on by the appellant in the court below. Mr. Mounsey informed this Court that provisions of the Land Registration Act 1925 of the United Kingdom were relied on by the wife when the case went before the trial Judge and this was the reason that the learned trial Judge saw fit to observe, in his judgment, that he would "be forever grateful to counsel for the defendant" for bringing the cases to his attention. According to Mr. Mounsey, the wife relied on those Williams and Glyn cases to demonstrate that "she had an overriding interest as the person in actual occupation and which a purchaser would have been bound by even though it was not registered". Counsel submitted that the 1925 Act was not applicable here.

I think it will suffice to say that the question of the application of the provisions of the Land Registration Act 1925 of the United Kingdom no longer demands attention in the instant appeal.

Learned counsel for the respondent referred to sections 3(1) and 3(3) of the Registration of Documents Ordinance No.30 of 1937 and he submitted that since the deed in this matter showed that Norman Shearman was a sole owner of the property, then it was unequivocal and beyond dispute that he had full power to dispose of the property (described in the said deed) by virtue of the provision of section 3 of the Real Property Ordinance No. 4 of the 1926 revised edition of the laws of this country.

Mr. Mounsey also submitted that (1) from the evidence on record the appellant had no definable interest - legal or equitable - which could affect the rights of third parties; and (b) as long as the property was conveyed according to the relevant statute laws and practice in St. Vincent /and the.....

and the Grenadines then "the occupational rights of the appellant must be regarded as personal rights vis-a-vis her husband and could not affect a bona fide purchaser for value". In counsel's view there might be said to be a beneficial interest while the marriage 'subsisted' but it could not endure to the disadvantage of a bona fide purchaser. Notice could not convert a non-right into a right though it could protect a pre-existing right.

Counsel pointed out that if this Court were minded to conclude that there was a beneficial interest then the right of Nellie Shearman moved "from the physical house to the proceeds of the sale" of the property; and that if the Court held that Norman Shearman was holding in trust so too the right of his wife shifted to the proceeds of the sale of the property.

Mr. Mounsey analysed the judgments in *National Provincial Bank v Ainsworth* (1965) 2 All E.R. 472 and asked this Court to say that the judgment of Lord Upjohn (at pages 485 to 486) was a succinct statement of the law to be applied in the instant case.

So far as sections 23 to 25 of the Matrimonial Causes Act 1973 were concerned, learned counsel for the respondent submitted that they were primarily procedural and designed to regulate the property rights of husband and wife inter se, and children if any; but the sections had no relevance where that property had passed to a bona fide purchaser for value.

I shall deal with the evidence which was adduced; and at the outset I wish to observe that it was not entirely accurate to say, as learned counsel for the appellant did, that the learned trial Judge made no findings of fact whatever in this case. As I read the judgment he made the following findings of fact: (i) the property in question stood in the name of Norman Shearman alone (ii) Norman Shearman sold that property to Ephraim Davis (iii) Norman Shearman gave up possession of the property (iv) his wife Nellie Shearman remained in possession after Ephraim Davis

/bought....

bought the property (v) at the time of hearing the case - March 1934 - Nellie Shearman was still in possession and (vi) she claimed that she had an interest in the property. It was also undisputed that the property in question had been the matrimonial home and, as learned counsel for the appellant properly conceded before this Court, the title to the property was registered.

In addition to what I have already stated there were facts given in evidence by Egerton Crick which remained unchallenged and undenied and so they could be regarded as established. The date of sale of the property and the contents of the relevant deed (produced in evidence) were clearly admitted and proven facts. The fact that Norman Shearman left the property some time after the date of sale - 6th February 1978 - was not disputed; nor were the descriptions of the land as set out in the deed or of the house as given by Egerton Crick. He said that it was a well and galvanize building with three bedrooms, having a monthly rental value of between \$150.00 and \$200.00.

There was evidence from Nellie Shearman which was unchallenged by cross-examination and evidence which was not specifically put to Egerton Crick when he was cross-examined. As far as the former was concerned she said that she worked very hard in the gardens at the property. She planted groundnuts and potatoes, she assisted by weeding the arrowroot field and with the transportation of the arrowroot to the factory and to the town where it was sold. She also helped her husband with his cows. Significantly, in my opinion, she made no claim to contributing financially to the purchase of the matrimonial home or to the payment of a mortgage of which she said she knew nothing. Although Nellie Shearman said in evidence that she told Mr. Crick that her husband could not sell the property because it did not belong to him alone, it would seem from the Record that her claim that she told him so was not put to Egerton Crick in cross-examination. She conceded that in early April 1978 she was asked to deliver up possession and refused to do so; and it is noteworthy that she said in evidence-in-chief that her husband promised to give her the /property....

property in dispute which was one of two properties she regarded as jointly owned by them,

The evidence revealed unequivocally that although Norman Sheaman, as sole owner of the property in question, disposed of it there was no allegation by Ephraim Davis that Sheaman agreed to sell or sold with vacant possession.

It is also clear from the Record that there was no third party proceeding in this action. Nellie Sheaman did not ~~move against~~ her husband; she preferred to contest the claim of Ephraim Davis.

I come now to the provisions of the Matrimonial Causes Act 1973 which learned counsel for the appellant submitted were applicable to the instant case. Sections 23 to 25 thereof fall within Part II of the Act which is concerned with financial relief for parties to a marriage and children of the family; and more particularly, as I read it, these sections are relevant to ancillary relief in connection with divorce proceedings. Reference to the headings given to the sections (see 2nd edition of Law and Practice in Matrimonial Causes by Bernard Passingham) will suffice. Section 23 is headed "Financial provision orders in connection with divorce proceedings etc.", section 24 is headed "Property adjustment orders in connection with divorce proceedings etc." and section 25 is "Matters to which court is to have regard in deciding how to exercise its powers under sections 23 and 24". ⁱⁿ Bearing/mind the nature of the action and the fact that Nellie Sheaman took no step to institute third party proceedings it would have been quite wrong for a court to adjudicate beyond the suit and seek to determine issues between husband and wife, especially when the husband who was not made a third party by the wife took no part in the claim for possession of the property which he had vacated and his wife had refused to vacate. With respect, therefore, I must differ from counsel for the appellant. I hold that the Matrimonial Causes Act 1973 sections 23, 24 and 25 were of no assistance to the Court in the claim

/before at.....

before it.

I also find myself unable to share the view of Mr. Commissioner that the evidence justified a finding that Nellie Shearman contributed on a fifty-fifty basis with Norman Shearman to the acquisition of the home. In my opinion such evidence as there was before the trial Judge failed to indicate any financial contribution to its acquisition.

The judgment in the case NATIONAL PROVINCIAL BANK LTD. v AINSWORTH (1965) 2 All E.R. 472 were of greatest assistance. Counsel for the parties dealt with these judgments with care and it is unnecessary for me to quote from them in extenso.

In the National Provincial Bank Ltd. case a husband and wife were living together in a house that belonged to the husband, the title to which was registered. The husband deserted his wife who remained in occupation. After he deserted her he mortgaged the house to the Bank but he later defaulted in the payments due under the mortgage and the Bank claimed possession of the property.

Although the most important question to be answered in that case was whether the respondent wife was entitled to an overriding interest within the meaning of Section 70(1)(g) of the Land Registration Act 1925. Lord Upjohn was of the view that construction of that section ought properly to be approached against the backdrop of the general law and he considered the "problem" in relation to unregistered land first. He described the "problem" thus:-

"In what circumstances, if any, is a in continued occupation of the matrimonial home, which home in law and equity is solely the property of the husband and from which he has wrongfully deserted her, entitled to stay in occupation of that home against the wishes of a subsequent purchaser from or encumbrancer of the husband?"

Lord Upjohn examined first the rights and obligations of husband and /wife....

wife inter se which rights and obligations arose from concepts included in the status of marriage; namely, the right and duty of the spouses to live together and the duty of the husband to maintain his wife. He pointed out that neither the common law nor the ecclesiastical law gave to the wife any right to occupy any particular matrimonial home which was the sole property of the husband. As he said later in the judgment:-

".....the law has never adjudicated between the parties where or how they are to live. It is for the spouses to decide where and in what state they and the family are to live.... A wife on entering a matrimonial home, the property of her husband, has no rights even inchoate in that home which the law will recognise or protect..... But, on the other hand, having regard to the duty of the spouses to live together the court does not, during the subsistence of the marriage, merely give effect to the strict legal and equitable rights of a spouse qua owner of the property as though the spouses were strangers. Recognising the obligations of the spouses to live together, the court will only make orders with regard to the occupation of the matrimonial home subject to those obligations."

The learned law Lord then referred to a case in which, by interlocutory injunction, a wife was ordered to leave the husband's house though it had been the matrimonial home, because the wife was defiant in preventing it from being sold, but the operation of the injunction was suspended until the husband provided the wife with a suitably furnished house as the home for her and the children. It must be pointed out that it seemed in that case that the wife had not been deserted.

Lord Upjohn also considered the position where the husband deserted the wife leaving her and the family in occupation of the matrimonial home, and he said this, (at page 485 letter b):-

"....what is the extent and ambit of her right to continue in occupation? I have already pointed out that, before desertion, she has no special rights in the particular house where the spouses are living, and I cannot see why, on principle, any better rights should arise on desertion. Her rights as a wife continue as before, they are not increased by breach of duty
/on the....

on the part of the husband, but, being in breach himself, he may find it difficult to turn her out of the house where she is lawfully living awaiting his return, and the court may prevent the husband by injunction from dealing with his property to the prejudice of the wife without safeguarding her position...."

Then, after explaining the many different things that might occur, such as offering the wife alternative accommodation or paying her a substantial maintenance to live elsewhere, the learned Law Lord said:-

"Finally, any right on the part of the deserted wife to remain in occupation terminates when the marriage terminates."

So far I have referred to what is regarded as the general nature of the rights of the wife against the husband. Lord Upjohn also dealt with how the rights of the wife against the husband, after desertion, affect third parties dealing with the husband at a date after the desertion; and though it had not been conceded in *National Provincial Bank v. Westminster* that the third party had full notice of the desertion by the husband, Lord Upjohn assumed that that was so, and said:-

"The right of the wife to remain in occupation even as against her deserting husband is incapable of precise definition..... So, as a matter of broad principle, I am of opinion that the rights of husband and wife must be regarded as purely personal inter se and that these rights as a matter of law do not affect third parties..... It has been the policy of the law for over a hundred years to simplify and facilitate transactions in real property."

The question of an intending purchaser making enquiry and inspection so as to ascertain the position of the wife was also considered by Lord Upjohn and he said this (letter b, page 486):-

"..... it is not reasonable for a third party to be compelled by law to make enquiries into the delicate and possibly uncertain and fluctuating state of affairs between a couple whose marriage is going wrong. Still less can it be reasonable to make an enquiry if the answer to be expected will probably lead to no conclusion which can inform the enquirer with any certainty as to the rights of the occupant."

/Among.....

Among other things it was held in *National Provincial Bank Ltd. v Ainsworth* that "a wife's right in relation to occupation of the matrimonial home, where that was the property of her husband, were personal rights against her husband, flowing from her status as wife, and did not confer on her any equitable interest or right of property in the land, nor was she, if she lived in the matrimonial home there as licensee of her husband; consequently, if a deserted wife remained in occupation of a matrimonial home that belonged to her husband, she had no right, good against third parties such as a purchaser..... from him, to continue in occupation of the matrimonial home."

In the instant case, no application or claim was made for the trial Judge to determine the rights of Nellie Shearman as against her husband Norman. If she was asserting that she had an interest in the property of which her husband could not dispose, then clearly he should have been a party in an action brought by her and in which the court would have heard the husband's answer to her assertions. This was not done, and as I have already quoted from Lord Upjohn's judgment "the rights of husband and wife must be regarded as purely personal inter se and these rights as a matter of law do not affect third parties" - an opinion which I humbly respect and wish to adopt and apply in this appeal.

Norman Shearman sold his property to Ephraim Davis, and any right to which his wife may lay claim in respect of that property must be against her husband and cannot now affect the transaction in which the ownership of that property has passed from Norman Shearman. I share the view of learned counsel for the respondent that it may be open to Nellie Shearman to pursue the proceeds of the sale of the property but I pass no judgment on the success or failure of any such action.

In my view the respondent is entitled to possession of the property at Dunbarton Estate described in the deed of conveyance dated 6th February 1978. The appellant Nellie Shearman has remained in occupation of the
/property....

property for about seven years now, or, to put it another way, the respondent has been denied possession for that time; consequently I would say that she should deliver up possession not later than one month from today's date.

The claim for mesne profits and damages did not appear to have been pursued in the court below.

The relief sought by the appellant from this Court should be refused and the appeal dismissed. I would so order.

E.H.A. BISHOP,
Justice of Appeal

I agree.

L.L. ROBERTHAM,
Chief Justice

I also agree.

L. WILLIAMS
Justice of Appeal (Acting)