SAINT VINCENT

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 7/1985
BETWEEN:

O'NEAL WILLIAMS - Appellant

and

SYLVIA WILLIAMS - Respondent

Before: The Honourable Mr.Justice Bishop - Chief Justice (Acting)
The Honourable Mr.Justice Moe
the Honourable Mr.Justice Mitchell (Acting)

Appearances: Mr. A. Saunders for the Appellant
Dr. R. Gonsalves for the Respondent

1986: July 17,
Dec. 8.

JUDGMENT

BISHOP, C.J. (Acting)

This is an appeal by O'Neil Williams against the dismissal of his action by Bertrand J. in a judgment of 4th June, 1985.

In his Statement of Claim O'Neil Williams, a 55 year old Stevedore, claimed against Sylvia Williams, his former common-law wife (1) a declaration that he is entitled to a half share of a dwelling house situated at New Montrose (2) an order that the said house be sold and the proceeds of sale be apportioned equally between them or that the house be valued by a valuer designated by the Court, and either party be permitted to purchase the half share of the other party, (3) such further and/or other relief as the Court may consider just in all the circumstances and (4) costs.

The trial Judge had before her the Pleadings as filed and the evidence of the parties to the action; and from her analysis she concluded, in effect, that O'Neil Williams had failed to prove his case as pleaded. Being dissatisfied with her decision, O'Neil Williams appealed, setting out in his notice of appeal three grounds for his dissatisfaction over a number of passages in the judgment. The grounds were argued together. They read as follows:

"1. The learned trial Judge was wrong in law in rejecting and/or finding that there was no evidence of contribution made by the Plaintiff which could properly be said to be referable to

/the construction./.....

the construction of the dwelling house.

2. The decision of the learned trial Judge was inconsistent, illogical and cannot be supported having regard to the nature of the evidence given both by the Plaintiff/Appellant and the Defendant/Respondent and the facts as found by her,

   (a) in particular the learned trial Judge failed adequately or at all to have regard to the intention of the parties as disclosed by the evidence; and

   (b) to properly assess the Plaintiff/Appellant's contribution in light of the peculiar circumstances of the case and the length of time taken to construct the dwelling house.

3. The learned trial Judge misdirected herself by seeking to determie whether the Plaintiff/Appellant's contributions had enabled the Defendant/Respondent to use her savings solely towards the building of the house rather than assessing the contributions of the Plaintiff/Appellant.

In my view these grounds were not clear and it was obvious that the first ground contained an inaccurate assertion. After quoting the judgment of the trial Judge in the Notice of Appeal (at paragraph 2(i) as follows:

> "There has been no evidence by the Plaintiff of any payments made which could properly be said to be referable to the acquisition of the house",

then the first ground of appeal substituted the word "construction" for the word "acquisition", which was used in the judgment. It must be clear, in my view, that acquisition of a house is not necessarily synonymous with construction of a house. Financial contributions may go towards the acquisition of a house but not necessarily to its construction; and vice versa.

In determining this appeal it is relevant to consider the Pleadings and then the evidence of the parties. It was contended by Learned Counsel for the Respondent, Sylvia Williams, here and in the Court below, that O'Neil Williams failed to prove the facts on which he relied for his claim to an equal share in the dwelling house.

/The following....

The following paragraphs of the Statement of Claim are pertinent:

> "3. Throughout the period of cohabitation the Defendant had no income of her own save and except the small profits generated from her activity as a street vendor. The Plaintiff financed the Defendant in starting her activity. The income from the Plaintiff's work provided the mainstay of the household's livelihood.
>
> 4. During the time they were living together the parties decided to build a wall dwelling house at New Montrose on lands owned by the Government of Saint Vincent and the Grenadines. The Plaintiff borrowed over $7,000 from the St. Vincent Co-operative Bank Ltd. for the purpose of building the house. In addition thereto much of his wages during this time were spent on the house and he himself worked physically to help construct the house. The Defendant's brother, Dertram Williams, also did a great deal of..... labour on the house.
>
> 5. The house.....was completed in 1981..... The parties moved into the house in 1981 together with the Defendant's four children, and they all lived there until 1983."

I experienced difficulty in ascertaining from those assertions of fact why the claim sought was in respect of a one-half share. How did Sylvia Williams become entitled to a one-half or any other share on the basis of those facts? De that as it may the Defence as filed was:

> "2. The Defendant denies each and every allegation of fact contained in paragraph 3 of the Statement of Claim. The Defendant will further say that she had a regular weekly income of at least $40.00 from her job as a street vendor. That sum, plus the substantial periodic returns from a "sou-sou" scheme were the mainstay of the household's livelihood. The Plaintiff's contributions to the maintenance of the household varied weekly between $15.00 and $20.00.

/3.....4. Further.....

3. .....

4. Further to paragraph 3 above, the Defendant asserts that the Plaintiff knew nothing about the construction of the house until after she had started it. The Plaintiff did not put any money towards its construction and no money was borrowed from any bank for the purpose of building the said house. Moreover, the Plaintiff worked for only a few days on the house when it was almost finished in 1981. The first monies of $2,000.00 which actually started the house were borrowed by the Defendant..... Her brother, Bertram Williams, helped with the provision of building materials. Thereafter, the Defendant's own resources from time to time carried the construc tion work along.

5. The Defendant admits that she and the Plaintiff moved into the house in 1981 but the house was not quite finished.....it is still unfinished....."

There was no counterclaim and the Pleadings were closed at that point. I turn now to the evidence in the case.

THE CASE FOR THE APPELLANT

Some time in 1971 he became friendly with Sylvia Williams. They enjoyed an intimate relationship as man and wife until they parted company. In 1973, as a result of what she said to him about her relationship with her mother with whom she was then living, he invited her to live with him at his apartment in Middle Street. She accepted his invitation and with her four children (from four different fathers) moved in at the apartment which he was then renting for $12.00 per month. At the time, Sylvia Williams earned money selling sweets, nuts and chewing gum from a tray. O'Neil Williams was working as a Stevedore earning an average weekly wage of about $50.00 or $60.00. From this he paid the rent and the electricity bill. It was not made clear what the electricity bill was at the time. In addition he spent money buying beer, strong rum and whiskey which he drank - an exercise that he accepted was his recreation - and he contributed a weekly sum of $25.00 towards his meals and to help in maintaining the other members of the household. According to the Appellant, the house was maintained from his earnings because most of the time Sylvia Williams used her earnings from the tray to "throw sou-sou." Yet, he then

/testified.....

testified as follows: "She use income from sou-sou together with what gave her to run the house."

On the basis of that evidence thus far, there was little or no significant saving of money on the part of either of them.

In 1973 O'Neil Williams was made redundant at Geest Industries Ltd. where he had worked regularly from about 1958. He was paid a lump sum of $1,200.00. Between 1973 and 1976 the Appellant was not earning a regular weekly wage. Work for him depended upon the frequency with which ships visited with cargo to be unloaded and upon an agreed system of rotating stevedores to spread the work as evenly as could be done. Consequently, he often waited around in town for his turn to work. O'Neil Williams also advanced this as a reason why he did not visit the house when it was under construction, more than four or five times. (It is pertinent to interpose here that there was evidence before the Court that the house took about thirteen years to be built to the point where it was habitable; and that it was a cement block house with galvanise roof 18' x 12', with two bedrooms and a hall).

In 1976 O'Neil Williams was re-employed at Geest Industries and once again he received a regular weekly wage of about $50.00 to $60.00. He continued in such employment for the remainder of the time that they lived together and beyond. Indeed, when he testified in May, 1985, he was still so employed.

I think it is helpful to quote the following evidence-in-chief of the Appellant:

> "I know when the house began to build. I do not know what year. It was done piece by piece. It had to be in the 1960's. We.....began a relationship as man and wife in 1971 and she came to live with me between 1973 and 1974. When house began we had a little relationship. I used to make loan from Ford Bank and pass over the greater part. In all, I borrowed $7,000.00. It was borrowed piece by piece. I would say I borrowed from the bank about five times. I borrowed the first time in 1976..... The loan of $7,000.00 was from 1976 to 1983. We moved into the house in 1981. The house was finished when we moved in."

As far as his assistance in the construction of the house was concerned, the Appellant said this in evidence-in-chief:

> "I put on the roof. I assisted in carrying sand and blocks."

Learned Counsel for the Respondent was not content to leave the evidence on this aspect there, he cross-examined to elicit the following

/answers.....

answers:

> "I bought materials for the house.....bought lumber about two occasions. I bought 14 pieces for the roof. I can't remember how much I paid for them."

O'Neil Williams admitted that he kept no accounts in connection with the building of the house though he estimated its cost of construction at about $12,000.00 or $13,000.00. When asked about labour on the house he admitted that he did not hire labourers, skilled or unskilled. He said that Sylvia Williams was responsible for hiring the skilled labourers. However, he said that he carried four or five friends to assist in the building of the house about three or four times. Bertram Williams gave of his time and labour free of cost. Dr. Gonsalves also questioned O'Neil Williams about the loan of $7,000.00. It was shown that there were ten separate loans made between October, 1976 and May, 1984, totalling $6,700.00. The house, according to the Appellant, was completed in 1981 and thereafter no money was spent on it. Between July, 1981 and May, 1984, five loans to the total sum of $3,900.00 were made. So that if the house was occupied in May, 1981 (as Sylvia Williams claimed) then the total of the loans made before that date was $2,800. In October, 1976 $600.00 were borrowed, of which the Appellant said he gave Sylvia Williams $400.00; but he could not say how she spent it.

In September, 1977 he gave her $500.00 from the sum loaned. O'Neil Williams was quite vague and unhelpful on what part of the $2,800.00 - if any - was used by him or by her towards the construction of the house, and it may not be without significance that he did not respond when learned Counsel put it to him that he "blew it" on himself, all except for $200.00 which he gave to Sylvia Williams.

So much for the case as contained in the evidence of the Appellant.

There were no witnesses called by either party. However it was encumbent upon O'Neil Williams to establish his claim by the strength of his evidence and not by the weakness of Sylvia Williams' evidence.

THE CASE FOR THE RESPONDENT

Sylvia Williams gave evidence which was not denied and indeed was accepted by O'Neil Williams, that she submitted an application to the Housing Department of the Government of St. Vincent and the Grenadines for permission to erect an 18' x 12' wall house on a piece of land at New Montrose, owned by the Government. The application was successful and she was allocated a spot, free of rent. That was in about the year 1980.

/From then.....

From then until 1981 she set about, with generous financial help from her mother ($500), her aunt ($1,000) and a sister ($500) and with money that she saved from time to time through her sou-sou, along with free physical assistance from her brother, Bertram Williams, (a carpenter and mason) and some of her friends, to erect a house on the land. She gave evidence to prove the extent of her weekly earnings from selling items from her tray and from her three (3) sou-sou contributions. She said that the house cost between $5,000 and $6,000, nearly half of the amount estimated by the Appellant. Sylvia Williams was emphatic that she received no money, whatever, from the Appellant for use in the construction of the house whose foundation had already been erected when she went to live with him in 1971. The Respondent said, and it would seem that the Appellant agreed, that she was in charge of the construction work. She also rendered significant physical help working, as she put it, "like a man". According to her, he helped very little and irregularly even during the period when he was not working at Geest Industries Ltd.; but he did give her $200 as part payment for the wiring of the house for electricity.

It was agreed that there was a kitchen 10' x 10' made of old board and old galvanise. It was detached from the house and erected after they moved into the house in 1981.

THE SUBMISSIONS

Learned Counsel for the Appellant submitted that, (1) there was ample evidence which revealed that the Appellant contributed substantially to the family expenses and this could properly be regarded as referable to the acquisition of the dwelling house, because by his doing so it permitted the Respondent to use her own money in acquiring the house; (") on the evidence in its totality a common intention that the Appellant was to have a beneficial interest in the property could be reasonably implied.

On the other hand, learned Counsel for the Respondent submitted that not only was the evidence of the Appellant vague but it failed to support the case set out in the Statement of Claim. Counsel pointed out that it was never asserted in the Pleading that the Appellant contributed to the family expenses in order that the Respondent could save to purchase materials or pay labour for construction of the house, which took 13 years to build. Dr. Gonsalves asked this Court to say that the Appellant failed to prove his case as alleged and so the appeal ought also to fail.

/In my....

In my view it is clear that the Appellant failed to establish either of the assertions in paragraph 3, quoted earlier. The Respondent "earned" money not only from her sales as a vendor but also from payments when her turn came around in the sou-sou scheme. She was assisted in starting her selling activities and if the Appellant contributed there was also evidence that Linda Alleyne helped her with the first money that she borrowed to run that business. Out of his own mouth, O'Neil Williams said on oath that Sylvia Williams added to the money he gave her in order to have enough to maintain the members of the household. Paragraph 4 of the Statement of Claim was not established either. Clearly, there was no evidence to suggest, even remotely, that the parties made a decision, when they were living together, to build a wall dwelling house at New Montrose. The claim that he borrowed $7,000.00 from a bank for the purpose of building the dwelling house was not supported by evidence as elicited from him. The extent of his assistnce at the site, bearing in mind all the relevant circumstances, could scarcely be said to have been significant; nor did he show that any part of his wages was spent in acquiring the house. I agree with Counsel for the Respondent that O'Neil Williams did not assert in his claim that he contributed to the expenses of the household so as to leave the Respondent free to use or to save her own money to purchase materials for the house. It was implied by the Pleading that it was his money, and his money alone, from which the house was acquired. Therefore, having failed to prove his Statement of Claim the only result was that it should stand dismissed.

But the learned trial Judge went further to point out that such evidence as the Appellant relied on did not show to her satisfaction how much the family expenses amounted to or how much of such expenses were borne by him. The trial Judge also found that there was no evidence from O'Neil Williams of any payments made by him that could properly be regarded as referable to the acquisition of the house. As far as a common intention to share the beneficial interest in the property was concerned, the Judge stated, "there has been no evidence from the conduct of the couple down to the date of separation, to enable the Court to impute a common intention that the Plaintiff was to have a beneficial interest in the property". Then, on the loans made from the St. Vincent Co-operative Bank Ltd., the trial Judge found that the evidence did not support the view that the money was used towards either the erection of the house or the family expenses. Finally, the learned trial Judge concluded that she could not say that O'Neil Williams made any real substantial contribution towards the family expenses so as to enable Sylvia Williams to use her savings solely towards the building of the house

/Not.....

Not only did the trial Judge analyse the evidence carefully but she was in the position of being able to assess the demeanour of each party at the material time when they testified. Bearing in mind that learned Counsel for the parties were in agreement that the relevant law was to be found in the case BURNS v BURNS (1984) 1 All E.R. 244 (followed in Civil Appeal No. 5 of 1984 in St. Vincent, CUPID v THOMAS, Unreported), I am satisfied that on the evidence before her the findings of the trial Judge were not wrong in law, nor were they inconsistent, nor illogical so as to merit any interference with her decision to dismiss the action.

Since hearing this appeal, the case GRANT v EDWARDS and ANOTHER (1986) 2 All E.R. 426 has come to my attention. In my view the case has not altered the principles already laid down; rather, it seeks to express them more lucidly. Nevertheless, because it does so, I feel justified in quoting, even if extensively, from the judgments delivered.

A woman, Linda Grant, was the Plaintiff in the action and two brothers, George and Arthur Edwards, were Defendants. Arthur Edwards took no significant part in the proceedings. George Edwards was the important Defendant, as it was he and Linda Grant who had the real dispute.

The Judge sitting in the Chancery Division of the High Court heard the dispute between the couple as to the beneficial ownership of a house in which they once lived together, and he decided that the woman had no interest in the property. She appealed to the Court of Appeal whose decision was made known on 24th March, 1986. The appeal was allowed. Nourse L.J. delivered the first judgment; and after explaining the background against which the purchase of the property - 96 Hewitt Road, Hornsey, London N.8 - ought to be considered, said:

> "In order to decide whether the Plaintiff has a beneficial interest in 96 Hewitt Road we must climb again the familiar ground which slopes down from the twin peaks of PETTITT v PETTITT (1969) 2 All E.R. 385.....and GISSING v GISSING (1970) 2 All E.R. 780..... In a case such as the present, where there has been no written declaration of agreement, nor any direct provision by the Plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the Defendant, acted on by her, that she should have beneficial interest in the property. If she can do that, equity will not allow the Defendant to deny that interest and will construct a trust to give effect to it.
>
> In most of these cases the fundamental, and invariably the most difficult question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties, almost

/always.....

> always from the expenditure incurred by them respectively. In this regard, the Court has to look for expenditure which is referable to the acquisition of the house: see BURNS v BURNS (1984) 1 All E.R. 244..... per Fox L.J. If it is found to have been incurred, such expenditure will perform the twofold function of establishing the common intention and showing that the claimant has acted on it."

Then, after referring to the decisions in EVES v EVES (1975) 3 All E.R. 768, Gissing's case and Pettitt's case (see above), Nourse L.J. said at pages 432 and 433:

> "It seems therefore, on the authorities as they stand, that a distinction is to be made between conduct from which the common intention can be inferred on the one hand and conduct which amounts to an actig on it on the other. There remains this difficult question: what is the quality of the conduct required for the latter purpose? ..... In my judgment, it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house."

Perhaps I should emphasise that whereas in Grant's case, the woman was making the claim to a share in the property, in the instant appeal it was the man who was asserting his entitlement to a half-share in the house.

Mustill L.J. pointed out that the legal analysis in thecase was not at all easy, and he volunteered observations to explain his decision on the facts. He cited the principal authorities which were relied on in the argument (namely, Pettitt's case, Gissing's Case, Eve's case and Burn's case), and he listed eight propositions that he considered to be relevant and available from those authorities. It will suffice for the case now before us, to mention the first two propositions he extracted:

> "(1) The law does not recognise a concept of family property, whereby people who live together in a settled relationship ipso facto share the rights of ownership in the assets acquired and used for the purposes of their life together. Nor does the law acknowledge that by the mere fact of doing work on the asset of one party to the relationship the other party will acquire a beneficial interest in that asset.
>
> (2) The question whether one party to the relationship acquires rights to property the legal title to which is vested in the other party must be answered in terms of the existing law of trusts. There are no special doctrines of equity applicable in this field alone."

/The learned.....

The learned Lord Justice subsequently referred to two questions of importance which were not contemplated in the propositions. The first one was, "whether in the absence of a proved or inferred bargain or intention the making of subsequent indirect contributions, for instance in the shape of a contribution to general household expenses, is sufficient to found an interest"; to which he responded, "I believe the answer to be that it does not..... I prefer to express no conclusion on it." The second question of importance was not pertinent to this case before us.

The final judgment in Grant's case was that of Sir Nicholas Browne-Wilkinson V.C. who pointed out that "there has been a tendency over the years to distort the principles as laid down in the speech of Lord Diplock in GISSING V GISSING (1970) 2 All E.R. 780 by concentrating on only part of his reasoning"; and he then went on to deal with the speech insofar as was necessary for GRant's case. He said:

> ".....his speech can be treated as falling into three sections; the first deals with the nature of the substantive right; the second the proof of the existence of that right; the third with the quantification of that right."

Under the first section, Sir Nicholas Browne-Wilkinson V.C. said this:

> "If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a beneficial interest, has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated:
>
> (a) that there was a common intention that both should have a beneficial interest AND
>
> (b) that the claimant has acted to his or her detriment on the basis of that common intention."

In the case before us, the claimant O'Neil Williams, failed to demonstrate by evidence, to the satisfaction of the learned trial Judge, either (a) or (b) as stated in the first section above.

I do not propose to refer to what was said in the judgment of Sir Nicholas Browne-Wilkinson V.C. about the second and third sections into which he divided the speech of Lord Diplock, save to quote the following, from p. 439 at letter f:

> "It is clear from GISSING v GISSING that once the common intention and the actions to the claimant's detriment have been proved from direct or other evidence, in fixing the quantum of the claimant's beneficial interest the court can take into account indirect contributions by the plaintiff such as the plaintiff's contributions to joint household
>
> /expenses.....

> expenses..... In my judgment the passage in Lord Diplock's speech (1970) 2 All E.R. 760 at 793..... is dealing with a case where there is no evidence of the common intention other than contributions to joint expenditure; in such a case there is insufficient evidence to prove any beneficial interest and the question of the extent of that interest cannot arise."

As I understand the evidence in the case before us, and without for the moment considering the Statement of Claim (which was never amended at the trial), the Appellant sought to rely mainly on evidence of his contributions to joint expenditure. The learned trial Judge pointed out that there was no evidence or insufficient evidence to prove any beneficial interest. Therefore, the question of the extent of the interest did not arise.

In GRANT v EDWARDS and ANOTHER, it was held, on the facts,

> "the Defendant' statement that the Plaintiff's name would have been on the title deeds but for her matrimonial proceedings sufficed to show the necessary common intention or precluded the Defendant from denying that the Plaintiff had a proprietory interest in the house from the outset. Furthermore ..... the Plaintiff had acted to her detriment in reliance on that common intention by making the financial contributions without which the mortgage instalments could not have been paid by the Defendant. Moreover, the act of the Defendant in crediting the balance of the insurance moneys to a joint account, when viewed against the background of the initial common intention, and the substantial indirect contributions made by the Plaintiff to the mortgage instalments.....was the best evidence of how the parties intended the property to be shared. Accordingly, the Plaintiff was entitled to a half share in the house....."

I think that it is clear that the facts as found in Grant's case justified the inference of an intention that both parties should have an interest in the house. I cannot say the same for the instant case, the facts of which I have already mentioned.

On the basis of the legal principles and for the reasons already explained, this appeal should be dismissed with costs to be taxed if not agreed.

E.H.A. BISHOP
Chief Justice (Acting)

I agree.

G.C.R. MOE
Justice of Appeal

I also agree.

H.L. MITCHELL
Justice of Appeal (Acting)