(7)

ANTIGUA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 4 of 1987

BETWEEN:

ISADORE BROWNE - Appellant

and

MARIA ROSETA BROWNE - Respondent

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

Appearances: Dane Hamilton for the Appellant
B. Lake, Q.C and Kentish for the Respondent

1987; Nov. 3, 4,
1988; Feb. 22.

JUDGMENT

MOE, J.A.

This appeal concerns a claim by a former wife, the respondent, to a proprietary interest in the property described as Registration Section Golden Grove,Block B12 1989B Parcel 176 the legal estate in fee simple in which is vested in her former husband, the appellant. The claim was made under section 19 of the Married Women's Property Act Cap. 352 and to a one-half share in the beneficial interest in the property. The learned trial Judge held that the respondent was entitled to a proprietary interest but assessed her share at one-quarter. The burden of the former husband's appeal is that the former wife is not entitled to an interest at all while the former wife has also challenged the decision on the basis the assessment of her interest was too low.

The parties got married on 30th March 1975. At that date the appellant owned the plot of land contained in the Parcel 176 described above and on which the foundation of a house to floor level had been laid After marriage the parties lived together at the house of the appellant's father along with the father and appellant's brother. All of these persons occupied one bedroom. By 1977 the parties had 2 children. The respondent complained to the appellant that living in the present conditions was not the arrangement. He had told the respondent that they would live in his family's home until the house on Parcel 176 was finished.

In 1977 construction of the house on Parcel 176 continued. The learned Judge found that the materials for the house or any rate a

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substantial part of them were bought from Francis Nunes where the appellant was an employee and that money was deducted from his wages in payment for the materials. That the respondent assisted the appellant in carrying cement blocks and galvanize from where they were deposited on the land on delivery for about 100 yards to the building site. That the respondent shovelled top soil and carried it for about 100 yards. That she cooked food for the six to eight men who assisted the appellant in building the house at week-ends and took meals in lieu of wages. That she provided this food out of her own resources. That she used her own money to supplement the family income. She also bought paint with $400 given to her by her mother and she paid a painter $200 to paint the house.

Counsel for the appellant first sought to impress upon this Court that certain of the findings of the learned trial Judge were unreasonable and then argued that without such findings the respondent could not be held to have made indirect contribution to the acquisition of the house and certainly not a substantial one. There was ample evidence before the learned Judge on which he could have reached his findings. The role of a Court of Appeal in relation to findings of fact is well established and I can find no possible ground for interfering with the Judge's findings of fact.

The crucial question is whether on the facts found, the learned Judge correctly concluded that the respondent had a proprietary interest. The principles by which a court may be guided in the determination of such an issue have been variously enunciated in a plethora of cases, the statements being tailored to suit the facts and situation of the case in which they were made. We were referred to the following cases:-

ALLEN v ALLEN (1961) 3 All E.R. 385
BUTTON v BUTTON (1968) 1 All E.R. 1064
PETTITT v PETTITT (1969) 2 All E.R. 385
GISSING v GISSING (1970) 2 All E.R. 780
COWCHER v COWCHER (1972) 1 All E.R. 942
GRANT v EDWARDS (1986) 2 All E.R. 426
MAHARAJ v CHAND (1986) 3 All E.R. 107
RE BASHAM (1987) 1 All E.R. 405
RATHWELL v RATHWELL 83 D.L.R. 289
PETKUS v PETKUS 117 D.L.R. 257

The property with which we are concerned is vested in the appellant alone. The authorities clearly show that if the respondent is to establish that she has a beneficial interest in the property, she must establish that the appellant holds the legal estate on trust to give effect to that interest. See Burns v Burns (1964) 1 All E.R. at 250 per Fox L.J. They further show that such a trust may be established by the respondent demonstrating that (a) there was a common intention between

/the parties.....

the parties that she should have such an interest and (b) she has acted to her detriment on the basis of that common intention. See Grant v Edwards (1986) 2 All E.R. 426.

It was Counsel's submission that there could be no resulting trust arising out of the Judge's findings as to give the respondent a share in the matrimonial home. He argued that the learned Judge's treatment of the matter of labour costs in the construction of the house was crucial. Further that apart from the labour costs, the efforts of the respondent were insubstantial. The learned Judge said he accepted the submission that by providing the meals in lieu of wages for the men when they assisted the appellant in the building of the house at week-ends the respondent is to be regarded as having borne the labour costs estimated to be about $60,000.00. Appellant's Counsel submitted that if the appellant's friends helped him, the friend's labour is to be regarded as the appellant's contribution and then labour costs must be attributed to him.

It seems to me that the appellant got the labour of his friends for a consideration, that is, food. That food was bought by the respondent out of her own resources and prepared by herself. By her so doing the appellant was able to get labour on the house for which he would otherwise have paid money estimated at $60,000. I can find no justification for faulting the attributing of the labour costs to the respondent.

In support of his submission on insubstantial efforts, Counsel contended that the use by the respondent of her own money to supplement the family income, the lifting of cement blocks from one spot on the land and carrying them to another spot for 100 yards away, the shifting of galvanize for a similar distance and the shovelling of top soil and moving it were all no more than would be expected of a wife. Such a view of the respondent's conduct did not find favour with the learned Judge and in my view rightly so. It will be seen later that these matters were all part of the conduct which the learned Judge regarded as action by the respondent upon the common intention of the parties that she was to have a share in the property. For my part most of the matters provided strong evidence of the common intention that the respondent was to have a proprietary interest. But to this I will return.

Counsel for the respondent after a review of the evidence, particularly those aspects already highlighted above, pointed to the tests applied to the facts applied by the learned Judge which were submitted to be the correct ones. The learned Judge stated ".....the plaintiff and defendant are humble people .....the thought of dissolution of marriage never entered into their consideration at the time they contemplated the acquisition of the matrimonial home. Their concern at the time was how they could acquire the matrimonial home on their meagre

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resources. In this regard the plaintiff by great sacrifice managed the household on a meagre allowance of $60.00 per week given to her by the defendant and at the same time supplemented this out of her own income. She did that with the realisation that she and the defendant were acquiring a home for the benefit of the family. By this sacrifice, the defendant had his wages almost intact and as a result he was able to purchase materials or credit materials whereby deductions were made from his wages to pay for the materials.....The result is the same as if mortgage repayments had to be made. .....I can infer from the conduct of the parties that there was a common intention that the plaintiff would have a beneficial interest in the matrimonial home". I can find no fault with that conclusion.

The learned Judge went on in his judgment to say "The plaintiff in reliance on that intention had acted to her detriment. In that, I do not think a wife would have been expected to make the sacrifice which the plaintiff had made. She would not have been expected to run the household on $60.00 when the defendant could have given much more towards the maintenance of the house. She would not be expected to supplement the family income out of her meagre wages. She would not be expected to provide and pay for the meals for 6 to 8 men when they worked on week-ends. Nor would she be expected to carry building blocks and galvanize for a distance of 100 yards to the building site and shovel top soil. The plaintiff would not have done those things if she was not to have beneficial interest in the matrimonial home".

The learned Judge then dealt with the matter of attributing labour costs to the respondent and stated "In the light of the foregoing I hold that the plaintiff had made a substantial indirect contribution towards the acquisition of the matrimonial home and is therefore entitled to proprietary interest".

The learned Judge clearly proceeded in keeping with the tests adumbrated earlier in this judgment and applied them to the set of circumstances he had to consider. I can find no fault with his conclusions on application of these tests. This finding that the respondent is entitled to a proprietary interest is therefore upheld and the appellant's appeal must fail.

Left for determination is whether the learned Judge properly assessed the interest of the respondent. Counsel stressed that one must look not only at the contribution of the parties to the acquisition of the property concerned but also to the conduct of the parties which is relevant to the issue of the extent of the beneficial interest. Indeed it was necessary to consider all the circumstances of the case. It was submitted that on the totality of the evidence the respondent's interest was more than one-half.

/Once ....

Once a claimant has established a beneficial interest in the property prime facie the extent of that interest will be that which the parties intended it to be. The following passage in Lord Diplock's speech in Gissing v Gissing (1970) 2 All E.R. 780 at 792 provides useful guidance. He said:

> "If the court is sastisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made on this understanding, the court in the exercise of its equitable jurisdiction would not permit the husband in whom the legal estate was vested and who had accepted the benefit of the contributions to take the whole beneficial interest merely because at the time the wife made her contributions there had been no express agreement as to how her share in it was to be quantified. In such a case the court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse on which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently. It is only if no such inference can be drawn that the court is driven to apply as a rule of law, and not as an inference of fact; the maxim "equality is equity" and to hold that the beneficial interest belongs to the spouses in equal shares."

In the instant case the learned Judge stated:

> "Having decided that the plaintiff has made a substantial indirect contribution to the acquisition of the matrimonial home, there being no clear intention as to their respective entitlements, can the proprietary interest of the parties be fairly determined inlight of the evidence? I have no doubt that the answer to this question must be in the affirmative.
>
> The defendant says in his evidence that the present value of the house is about $135,000. I have decided that in my view the plaintiff as a result of her efforts had borne the labour costs which was estimated to be aboiut $60,000. In light of all the evidence I assess the plaintiff's contribution to the acquisition of the matrimonial home to be 1/4 and the defendant's 3/4."

The burden of the respondent's submission is that the learned Judge apportioned to her the value of the labour costs attributed to her. The statement of the learned Judge relating to his evaluation of the extent of respondent's interest is concise. He did specifically advert to the labour costs $60,000 and the value of the house $135,000. There was evidence that the value of the land is $80,000 which added to the value of the house gives an amount a quarter of which is around about the value of the labour costs. But the extent of the interest is to be determined in

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the light of all the evidence as the learned Judge said he did.

What then does a consideration of all the circumstances reveal. It was the respondent who goaded the appellant into building the matrimonial home. At the time of building the house the parties were concerned with acquiring their home. This in my view points to an intention that the home was to be joint property an intention which caused the respondent t put in the efforts referred to above. It is here I may observe that I find it difficult to accept that the respondent would have been lifting and transporting cement blocks, shovelling and transporting top soil except there was at least an understanding that she was assisting in erecting a house in which she was to have a share. The whole tenor of the evidence is that the building of the house was a joint effort from start to finish; the respondent even bought the paint and paid the painter for the house to be painted on completion of the erection of the building. During the building operations she put in manual labour as did the appellant. The efforts do not have to be equal. Her management of the parties financial resources towards this end has been recounted above.

All these facts taken into account point to the beneficial interest of the respondent in the property being equal to that of the appellant and a declaration would be made to that effect.

I would therefore dismiss the appellant's appeal and vary the order of the learned Judge as follows:-

1. The respondent/plaintiff to have a declaration that the property situate at Briggins Road in the parish of Saint John in the Island of Antigua and described in the Land Registry as Registration Section Golden Grove Block B12 1989B Parcel 176 is jointly owned by the plaintiff and the defendant in equal shares.

2. The Registrar of the Supreme Court is directed as follows:-

   (i) That he obtains the valuation of the property known as Registration SectionGolden Grove Block B12 1989B Parcel 176 by an independent recognized property valuer.

   (ii) That the said property be sold at Public Auction at a date to be fixed by the Registrar of the Supreme Court. That the sale be published in at least three issues of National Newspapers. The last publication to be 14 days prior to the date of the sale.

   (iii) That the proceeds of the sale be applied as follows:
   (a) On the payment of all expenses lawfully incurred by the sale ordered as above;

/that the.....

(b) that the balance of the proceeds of the sale remaining one-half to the plantiff and one-half to the defendant.

(iv) That the sale be postponed for a period of 60 days from today's date to give the appellant and respondent time to purchase the other's interest in the terms outlined above.

The respondent to have her costs.

G.C.R. MOE,
Justice of Appeal

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

L.G. WILLIAMS
Justice of Appeal (Acting)