SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Suit No. D76 of 1991

Between:

VERONICA HOWELL

- Petitioner

vs

IVAN GEORGE HOWELL

- Respondent

Mr. W. Hinkson for Petitioner
Mrs. A. Foster for Respondent

1994: May 26th
March 3rd
1997: April 30th

JUDGMENT

d'Auvergne, J

The parties were married on the 18th day of September, 1974, but had lived together as man and wife from 1962. The Petitioner is a born St. Lucian whereas the Respondent was born in St. John's Antigua.

A decree Nisi was obtained on the 30th of June, 1992 to be made absolute within three months.

On the 9th of July, 1993 an application for ancillary relief was filed and after four adjournments the matter was part heard on the 26th day of May, 1994 and completed on the 3rd of March, 1997.

The Petitioner presently lives in the United States of America and

is employed as a Child minder and the Respondent is a Cook who lives at Hospital Road, Castries, and is employed as a Chef at Marigot Bay Hotel.

The parties have six (6) grown up children and the only issues to be determined by this application concerns two properties namely, a parcel of land consisting of 2,500 sq feet with a concrete and wooden building situate at Faux-a-Chaux Hospital Road, Castries and secondly, an unsurveyed piece or parcel of land being five acres three roods and thirty nine perches more or less, situate at Millet in the quarter of Anse-la-Raye.

Much evidence was adduced by the Petitioner to show that the property at Hospital Road is Community property bought after the celebration of the marriage and that the second mentioned property, namely, the property at Millet belonged to the parties in equal shares despite the fact that it was purchased before marriage.

Learned Counsel for the Respondent conceded that the property at Hospital Road belonged to the Community and that the parties were co-owners with equal shares. However, Counsel for the Respondent vehemently argued that the property at Millet, Anse-la-Raye registered in the sole name of the Respondent, bought before marriage but during the period of concubinage belonged solely to the Respondent since the Petitioner had not contributed financially or otherwise to the purchase.

She argued that the Petitioner had no beneficial interest in the property nor was there any resulting trust created for her benefit.

She said that it was separate property and quoted **Article 1192 (2) (a)** and **(e)** of the **Civil Code of St. Lucia**.

She further quoted the case of **Burns v Burns 1984 1 ALLER Page 244** at **Pages 252** and **264.**

Learned Counsel on the other hand insisted that a substantive financial contribution was made by the Petitioner since her father contributed Two Thousand Dollars ($2,000.00) towards the purchase on her behalf and that she worked and planted the land with the Respondent.

He quoted the cases of: **Eves v Eves 1975 3 AER Page 768.**
Cook v Head 1972 2 ALLER 38
Gissing v Gissing 1970 2 ALLER 780

CONCLUSION:

The Plaintiff told the Court that her father paid her brother Clive Deligny for her share of the land and loaned the Respondent Two Thousand Dollars ($2,000.00) towards the purchase of the land at Millet.

Her brother, the said Clive Deligny, said that he loaned the Respondent Two Thousand Dollars ($2,000.00) towards the purchase of the land which was refunded to him by his father.

He stressed that he sold land to the Respondent at that price because he said, "I intended my sister to benefit". He also said that the very morning of the Court hearing he asked the Respondent for his Two Thousand Dollars ($2,000.00).

The Respondent confirmed that the land was purchased for Seven Thousand Dollars ($7,000.00), from Clive Deligny, but there was "no discussion" made between the Petitioner and himself about purchasing the property and that he bought property in his sole name.

He said "I did not mean girlfriend I was living with to have a half (1/2) share of the property."

First of all, I would like to stress that the property under

consideration is not the matrimonial home but a piece of land on the outskirts of Castries on which bananas were planted.

In my judgment there was no express trust of an interest in the property for the benefit of the Petitioner; and there was no express agreement to create such an interest. The Petitioner made no direct contribution to the purchase price. Her case, therefore must depend on showing a common intention that she should have a beneficial interest in the property. In order to determine if such a common intention exists, it is the intention of the parties when the property was purchased that is important. The evidence does not disclose this common intention, infact, Respondent states categorically that there was no such intention and I believe him.

It is also my view that from the evidence no circumstances arose to show that Respondent intended to confer an equitable interest on the Petitioner. The fact that she planted the land and reaped the products which were sold and used by the family does not, in my judgment, carry any implication of legal intention.

Based upon the above my order is as follows:

The Petitioner is not entitled to any share in the piece of land comprising of five acres three roods and thirty-nine perches more or less, situate at Millet and registered in the sole name of the Respondent.

That the Petitioner is entitled to half share in the property at Hospital Road comprising of 2,500 square feet with the concrete and wooden house erected thereon.

That each party do bear his or her Costs.

.....

SUZIE d'AUVERGNE
HIGH COURT JUDGE