

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

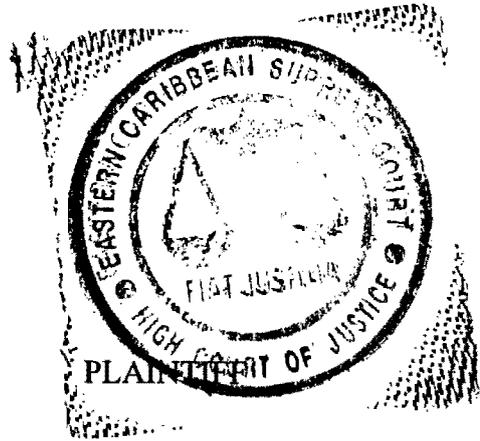
SUIT NO.: 506 OF 1992

BETWEEN: SYLTA CAIN

V

ELFIN CAIN

DEFENDANT



A Williams Esq for the Plaintiff

Mitchell J

JUDGMENT

This is a claim by a wife for a declaration as to her interest in a property to which her husband holds a deed. The case commenced by a writ of summons issued out of the Registry of the Supreme Court St Vincent circuit on 31 December 1992. The Defence was served and filed on 11 November 1993. The case has been ready for hearing since the Request for Hearing was filed on 19 August 1994.

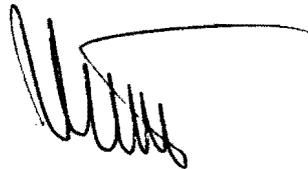
The husband did not appear in person at the hearing, and the matter was dealt with in his absence. Mr Robertson initially appeared for him and asked for an adjournment as his client had informed him that he had been under the impression that the matter had been adjourned for 3 months when it had been last called up. In any event Mr Robertson had not been properly instructed or briefed. He urged Order 35 and section 8 of the Constitution for the consideration of the court. Court was adjourned for half an hour to permit him to contact his client and try to have him appear to give evidence. The Defendant still did not appear. Counsel for the Plaintiff reminded the court that the case was a very old matter, the parties were very elderly, and the Defendant had had two indulgences before. The matter came up for trial on 17th April when it was adjourned at the request of the Defendant to permit him to brief counsel. On 1st May his counsel was still not briefed, and the court gave a final adjournment to today with costs of the day to the Plaintiff. He objected to any further adjournment. The court ruled that the justice of the case required that the matter proceed without further adjournment. Mr Robertson sought and was given leave to withdraw from the proceedings.

The facts are that the parties were married in Troumaca Methodist Church in St Vincent in 1950. The husband with his money bought a one acre parcel of land at Rose Hall Village in St Vincent from the family of the Plaintiff. He got his deed in 1960. Its number is 1236 of 1960. In 1960 the husband emigrated to England followed by the wife. They both worked in England. They

had 9 children. The two parties put their money together, and in 1972 built a 2 storey, 3 bedroom house on the land at Rose Hall Village. By 1980 the marriage was not working. The husband retired from his job and returned to St Vincent on pension. The wife also retired and also on pension. She ran a shop in the downstairs for 10 years until she left in 1991 when he severely beat her and injured her. She has now in 1996 built her own small home nearby and runs the shop from the new premises. He rents out the downstairs premises. He has taken out 2 mortgages on the property and has defaulted in the loans. The bank is threatening to sell the property. He has sold off some of the land. She has now recently commenced divorce proceedings and obtained the decree nisi in June.

Having heard the evidence I was satisfied that though the wife had not contributed to the purchase of the land in 1960, she had made an equal contribution to the construction of the building on it. The court cannot separate the house from the land. In any event, at least 2 house plots have been cut out of the acre and sold by the husband. I therefore made the following orders:

- 1 A declaration is granted that the Plaintiff is the owner of a one third share of the property which as of the date of this judgment remains the subject matter of deed 1236 of 1960.
- 2 An order is made that the Defendant is not permitted further to mortgage, sell or deal with the property in any way inconsistent with the Plaintiff's one third interest.
- 3 Costs to the Plaintiff to be taxed if not agreed.



ID Mitchell, QC

High Court Judge (Ag)

July 21st 1997