

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 19 OF 1997

BETWEEN:

JEAN GIBBS

APPELLANT

and

SHARON OTWAY
(Personal Representative of the Estate
of Thomas Otway, Deceased)

SHARON OTWAY

RESPONDENTS

Before: The Hon. Mr. C.M. Dennis Byron
The Hon. Mr. Satrohan Singh
The Hon. Mr. Albert N. J. Matthew

Chief Justice [Ag.]
Justice of Appeal
Justice of Appeal [Ag.]

Appearances: Mrs. Celia Edwards for the Appellant
Miss Leslie-Ann Seon for the Respondents

1998: February 27

JUDGMENT

SINGH, J.A.

This is an appeal from the judgment of **Alleyne J.** of July, 18, 1997. The appeal concerns that part of the judgment where the learned judge deprived the appellant of a half share of the beneficial ownership of that part of the assets of the estate of Thomas Otway deceased comprising cash.

The appellant according to the judge, had based her claim on a constructive trust in her favour created by the shared financial responsibility, alleged verbal assurances and agreement and common intention of the plaintiff and the deceased, the time and care devoted to the deceased through 16 years of common law relationship and through two heart attacks and a stroke, and reliance of the plaintiff on these

circumstances whereby she claims to have acted to her detriment. The property in issue was the cash in the various fixed deposits and other accounts in the name of the deceased.

There was an agreement at the trial that the deceased's Belmont property should be vested solely in the appellant and his Grand Anse property in the respondent. Ownership of a jeep was also vested solely in the appellant by this agreement. The learned judge also ruled that the principal liability to pay the mortgage debt of the Belmont property should be in the appellant.

The neat point addressed to us in the appeal was, given the circumstances surrounding the way of life of the appellant and the deceased as disclosed in the evidence of the appellant whose evidence was accepted by the judge in its entirety as being truthful, and the following words of the deceased to the appellant, he having disposed of certain of his real estate assets, we would live off the money we have, whether the clear intention of the deceased was that the appellant should have an equal share with him with respect to those monies.

The law on the issue is more or less settled. It is not in dispute. I do not propose to elucidate on it in this Appeal's judgment. I will simply apply it to the issue argued.

Based on the evidence given by the appellant in this matter, especially her evidence of the deceased words to her that we would live off the money we had, and when we take all the circumstances of the case in relation to their dealings with each other, and their

respective contributions to the assets acquired during this relationship, we have come to the conclusion that the clear intention of the deceased when he used the words "We would live off the money we have" must have been that the appellant was entitled to half share of whatever monies the deceased had up to the time of his death. The accepted evidence of the appellant was that during her relationship with the deceased they shared everything. Indeed, the Belmont property, which was finally vested in her by order of **Alleyne J** in this matter, was bought in their joint names as tenants in common, even though she alone bore the burden of the repayment of the mortgage. Miss Seon argued that when Thomas Otway died the beneficial interest of the appellant in those words died with him. We cannot glean that intention from those words when their relationship was looked at as a whole. In our judgment, had the appellant, on this evidence pursued a claim for a declaration of trust against the deceased during his lifetime, the probability was that she would have succeeded.

For these reasons we would allow the appeal and set aside the judgment of the learned trial judge. We grant the declaration prayed for in the notice of appeal that the appellant is entitled to one half of the sums held on deposit at the National Commercial Bank Limited and Jonas Browne and Hubbards Limited in the name of the deceased. We award the costs of the appeal to the appellant to be paid out of the estate of the deceased. We also order that costs incurred by the respondent as a result of this appeal be also paid out

of the said estate to the respondent.

.....
SATROHAN SINGH
Justice of Appeal

I concur

.....
C.M.DENNIS BYRON
Chief Justice [Ag.]

I concur

.....
ALBERT N.J. MATTHEW
Justice of Appeal