SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. D 30 OF1995

BETWEEN:

SUSAN LAMMIE

Petitioner

and

PATRICK LAMMIE

Respondent

Appearances:

Ms. Edith Petra Jeffrey-Nelson for the Petitioner
Ms. Veronica Barnard for the Respondent.

2000: June 15, 30
September 19

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** The Petitioner and Respondent were lovers prior to their marriage on 26th day of December 1981. They met sometime in 1973 and in 1976, the Petitioner bore a daughter, Hazelyn Cardin Lammie for the Respondent. In 1979, the Respondent went to New York to pursue further studies after being awarded a United Nations Scholarship. In December of the said year, the Petitioner joined him and they cohabited together for approximately two years. During the period of concubinage in New York, a second child, Theron Lammie was born to the Petitioner and the Respondent on 9th day of April 1981. They returned to Saint Lucia in the summer of 1981 and were married in December of that year.

[2] On 21st day of April 1995, the Petitioner filed a Petition seeking dissolution of the marriage between herself and the Respondent. On 7th day of April 1997, the Petitioner obtained a decree nisi which had subsequently been made absolute.

[3] The Petitioner and the Respondent being for all intents and purposes permanently estranged, on 14th day of September 1999, the Petitioner filed a Notice of Application with supporting affidavit for Ancillary Relief claiming the following reliefs namely:

CUSTODY AND ACCESS

That the Petitioner be granted custody of the following child of the family who is under the age of eighteen namely: **Donna-Sue Lammie**– born on 4th day of January 1984 and that the Respondent be allowed access to the said child of the family.

MAINTENANCE

That the Respondent be ordered to pay maintenance in the sum of $500.00 per month for each child of the family namely:

(1) Cardin Lammie

(2) Theron Lammie

(3) Donna-Sue Lammie.

PROPERTY

(i) That the Court do declare the following properties to be community property:

(a) The property situate at Sunbilt with the matrimonial home erected thereon.

(b) Parcel 1455B 220 for the Registration Quarter of Gros Islet.

(c) Parcel 1640B 115 for the Registration Quarter of Dennery.

(d) All items of furniture left in the matrimonial home and listed in paragraph 19 of the supporting affidavit filed herewith.

(ii) That the Respondent be ordered to pay to the Petitioner the value of her half share in and to all properties and items referred to in (a), (b), (c) and (d) aforementioned.

COSTS

That the Respondent be ordered to pay the costs hereof.

[4] The Respondent swore and caused to be filed an affidavit in reply. Several other affidavits were filed and the matter was subsequently adjourned. During the hearing of the matter in Chambers, viva voce evidence was led on both sides.

[5] I propose to deal with the Notice of Application for Ancillary Relief in sequential order in the manner specified above.

CUSTODY AND ACCESS

[6] The Respondent did not contest this limb of the application for Ancillary Relief. I therefore order that custody of Donna-Sue Lammie born on 4th day of January 1984 be granted to the Petitioner with reasonable access to the Respondent.

MAINTENANCE

[7] On 15th day of November 1995, Matthew J. [as he then was] ordered that the Respondent do pay to the Petitioner the sum of six hundred dollars per month by way of *alimony pendente lite* commencing on 30th day of November 1995.

[8] The Petitioner now seeks an Order that the Respondent do pay maintenance in the sum of $500.00 monthly for each of the three children of the family. In effect, the Petitioner seeks an increased maintenance for each of the three children of the family. The Respondent, on the other hand, testified that he could only afford two hundred dollars per month for the maintenance of the children, Theron and Donna-Sue. In respect of Cardin, the Respondent alleged that Cardin has reached the age of majority having been born on 1st day of October 1976 and therefore any claim for maintenance for her cannot be entertained.

[9] In deciding matters of maintenance, Section 25 of the Divorce Act is instructive. Subsection (1) provides as follows:

> (1) "It shall be the duty of the Court in deciding whether to exercise its powers under sections 22, 23 or 24 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say –
>
> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (c) the standard of living enjoyed by the family before the breakdown of the marriage;
>
> (d) the age of each party to the marriage and the duration of the marriage;
>
> (e) any physical or mental disability of either of the parties to the marriage;
>
> (f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family…."

[10] Subsection (2) states:

> " Without prejudice to subsection (3), it shall be the duty of the Court in deciding whether to exercise its powers under section 23 or 24 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say –
>
> (a) the financial needs of the child;
>
> (b) the income, earning capacity (if any), property and other financial resources of the child;
>
> (c) any physical or mental disability of the child;

(d) the standard of living enjoyed by the family before the breakdown of the marriage;

(e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained."

[11] Broadly speaking, it is the duty of the Court to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

[12] Ms. Petra Jeffrey-Nelson, appearing on behalf of the Petitioner submitted that having regard to Section 23, Section 25 and Section 28 of the Divorce Act, the Court has jurisdiction to make an order for maintenance for all of the three children including Cardin. Suffice it to say, the Respondent has not refused to pay maintenance for Theron and Donna-Sue except that he has challenged the amount sought.

[13] In respect of Cardin, Counsel for the Petitioner submitted that the Court has to look at all of the circumstances of the case including:

(a) The financial needs of the child, being a College student.

(b) The income and earning capacity of the child, in this case lack thereof, she being a student.

(c) The manner in which she is being educated.

[14] Learned Counsel for the Respondent asserted that sine 1996, Cardin had reached and surpassed the age of majority. She left school in 1996 when she was twenty years old. At age 20, she became gainfully employed at Little Switzerland Gift Shop until recently when she left for College in the United States.

[15] In this context, Counsel referred to Section 28 (3) of the Divorce Act which provides as follows:

" (1) Subject to subsection (3) –

(a) no order under sections 23, 24 (a) or 26 shall be made in favour of a child who has attained the age of eighteen, and

(b) the term for which by virtue of an order under section 23 or 26 any payments are to be made or secured to or for the benefit of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date when the child will attain the age of eighteen.

(1) The term for which by virtue of an order under section 23 or 26 any payments are to be made or secured to or for the benefit of a child shall not in the first instance extend beyond the date of the birthday of the child next following his age of eighteen years.

(2) The Court may make such an order as is mentioned in subsection (1) (a) in favour of a child who has attained the age of eighteen, and may include in the order made under section 23 or 26 in relation to a child who has not attained that age a provision extending beyond the date when the child will attain that age, the term for which by virtue of the order any payments are to be made or secured to or for the benefit of that child if it appears to the Court that –

(a) that child is, or will be, or such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment, or

(b) there are special circumstances which justify the making of the order or provision."

[16] Counsel for the Respondent submitted that this section implies that if on attaining the age of majority, the child is in fact attending an institution of higher learning as a continuing process, then an order for maintenance can suffice. According to her, the section does not contemplate a situation of a child who has attained the age of majority, goes to work, never consults a parent of her desire to go to University and expects the parent to be financially responsible.

[17] I agree with Learned Counsel for the Respondent. I have great difficulty in imposing such a burden on the Respondent when it is evident that Cardin never consulted him about her

desire to go to University. In light of the foregoing, I cannot order the Respondent to pay maintenance for Cardin.

[18] Having carefully considered and analyzed the evidence I think that it is only reasonable that the Respondent pays a monthly maintenance of three hundred dollars per child; namely Theron and Donna-Sue Lammie. In arriving at such a figure, I considered inter alia, the transportation cost for each child to travel to school and the health of Theron.

[19] Coupled with the application for increased maintenance, Counsel for the Petitioner also seeks an order that the Respondent pays the arrears payable from January 1997 pursuant to the Order of Matthew J.

[20] It is not disputed that the Respondent ceased paying maintenance towards the child, Cardin when she became gainfully employed in January 1997. But Counsel for the Respondent argued that the Order of Matthew J. was defective in law, as there is a significant difference between an order for maintenance and maintenance pending suit. I agree with Counsel. I also agree that the Respondent was not wrong to interpret the Order to mean maintenance for the three children equally and when Cardin attained the age of majority, he ceased payment of maintenance for her as no term was specified in the Order.

[21] Section 23 of the Divorce Act empowers the Court to make financial provisions for the maintenance of the children of the family. In this regard, Counsel for the Respondent implored the Court to read Section 23 of the Divorce Act conjunctively with Section 28 of the said Act. She submitted that as no term was specified in the Order, we must look to Section 28 which specifies the term. I agree entirely with the submission of Counsel.

[22] Learned Counsel for the Petitioner further sought an Order that the Respondent pays the cost of schoolbooks and other supplies for Theron and Donna-Sue and a half-share towards the children's medical bills of Theron and Donna-Sue.

[23] The Petitioner is about 44 years old and gainfully employed. She stated that she earns a monthly salary of $2,500.00 but proffered no documentary evidence to that effect. She admitted that she has moved on with her life. So has the Respondent. They must both contribute to the upkeep of their two children. I therefore order that the Petitioner and the Respondent contribute equally to the educational and medical expenses of these two children.

[24] Counsel also sought an Order that the Respondent do pay one-half of the Invoice at Victoria Hospital in relation to Theron. No documentary evidence was produced to support this allegation. I therefore make no order in respect of this invoice.

PROPERTY

(a) Matrimonial Home at Sunbilt

[25] According to the evidence, the Respondent purchased the matrimonial home in September 1981; some three months before his marriage to the Petitioner. It is admitted that the Petitioner and the Respondent with their children moved into the matrimonial home prior to the marriage and in cross-examination, he had this to say:

> "The house was purchased as the matrimonial home. I had the intention of bringing my wife and children into the house I bought. The home was going to be the matrimonial home for the time being."

[26] It remained the matrimonial home until 1994 when the Petitioner left.

[27] The matrimonial home is indisputably registered in the sole name of the Respondent. It is undisputed that the Respondent provided the deposit on the house with his own funds and with the assistance from a loan from the Saint Lucia Mortgage Finance Company. It is also undisputed that the entire loan repayment to the Saint Lucia Mortgage Finance Company was from the Respondent's salary.

[28] The crux of this matter relates to the rights of the parties with respect to the matrimonial home. The Respondent asserts that he is the sole beneficial owner of the house. According to him:

> "…I was given a stipend of $800.00 per month in New York and my salary was being lodged in the Royal Bank here. My salary was approximately $2,500. It was because of these monies that I could have acquired my house all by myself. I paid $52,000.00. I had to take a mortgage with the Saint Lucia Mortgage and Finance Company. I borrowed $29,000.00. My payment was $322.71 to the Bank…The loan was paid off by means of my salary. The Petitioner never made monthly payments towards that mortgage….I never had arrangement with the Petitioner. The Petitioner was not working when I purchased the property. She started working with Saint Lucia Rep. in February 1982. I purchased the property in September 1981.I took another loan from Saint Lucia Credit Union later. I took a loan of $7,000.00 to build the downstairs. Later I took another $6,000.00. It was also used to build the retaining wall outside."

[29] The Petitioner claims joint ownership with the Respondent and a consequential one-half share. She claims a beneficial interest in the property on the ground that she contributed substantially to the acquisition of the said property. She testified thus:

> " The house at Sunbilt was selected by my father approximately two months prior to the marriage. After the house was purchased, we entered in it right away. It was prior to the marriage….My understanding was that the house was community property. I had a job with Saint Lucia Rep. while the Respondent who worked at Victoria Hospital had a more stable job. The arrangement was that he pays the mortgage while I took care of the household. I was unaware that the property was purchased solely in the Respondent's name. I became aware later when there was a quarrel sometime in 1982 – when the last child was born. I am not disputing that the Respondent paid the mortgage installments. I was not General Manager until 1989. Prior to that, I paid the telephone bills. I worked for a good salary. O took home an average of $2,500.00 per month from Saint Lucia Rep. After I became General Manager at American Airlines in 1989, my salary doubled so I was earning almost double the salary of the Respondent's salary. As General Manager, I was already making $4,000.00 which did not include travelling or food. Mr. Lammie did not contribute towards the household, he could not have paid the mortgage….I was taking care of the children. I bought their clothing, food etc. I paid the maid."

[30] There is also uncontroverted evidence that the Petitioner remodeled the kitchen although the Respondent strongly denied that the cost of remodeling the kitchen was in excess of

$12,000.00. There is also evidence that the Petitioner expended a considerable sum of money to purchase ceramic tiles and some fixtures for the matrimonial home. There is also evidence that she built a pavement just in front of the house.

[31] Thus, the principal issue to be determined is whether the Petitioner, by her contribution acquired a share in the matrimonial home.

[32] Learned Counsel for the Respondent stated that Articles 1192 and 1193 of the Civil Code provide some assistance. Article 1192 (1) states as follows

:

> "The property of persons married in community is divided into separate property and the property of the community.
>
> (2) Separate property comprises:
>
> (a) the property, movable and immovable, which the spouses possess on the day when the marriage is solemnized…."

[33] Article 1193 (1) of the said Code reads thus:

> "Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage or, if acquired after marriage, is admitted or proved to have been acquired in one of the ways set out in Article 1192, or to otherwise belong to one of the spouses only".
>
> -subject to a proviso.

[34] Counsel for the Respondent rightly submitted that according to the Civil Code, the matrimonial home at Sunbilt belongs to the Respondent solely.

[35] But Sections 24 and Section 45 of the Divorce Act, No. 2 of 1973 provides for the separation of property and must be considered. In addition, Section 25 (1) provides the guidelines within which the Court is to exercise its discretion. This subsection gives the Court a wide discretion in the exercise of its powers to make financial provisions, order or orders for transfer and settlement of property.

[36] Section 45 of the aforesaid Divorce Act provides as follows:

> "The Court, on making a decree of divorce or of nullity of marriage may, if it thinks fit, on the application of either party made before the decree of divorce or nullity is made, make an order –
>
> (a) if any property of the parties is community property within the meaning of the Civil Code
>
> (i) directing that either party shall, for such time as to the Court may seem fit , be entitled to the use or usufruct of a part or the whole of such property; or
>
> (ii) declaring either party forfeit to the other of his or her share of a part or of the whole of such property; or
>
> (b) if any property of the parties or of either of them is separate property within the meaning of the Civil Code and the Court is satisfied that the other party has made a substantial contribution (whether in the form of money payments, or services, or prudent management, or otherwise howsoever) to the improvement or preservation of such property –
>
> (i) directing the sale of such property and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the Court thinks fit; or
>
> (ii) directing that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the Court thinks fair and reasonable in return for the contributions made by that other party."

[37] It is evident that the Divorce Act recognized the principle of constructive trust and the contributions to the home by the housewife for her services and even more cogent contributions being direct contributions towards the improvement of the property and maintenance of the household by a working wife. See: **Lang v Lang [Civil Suit No. 30 of 1991] [unreported] [Saint Lucia]**.

[38] It is common ground that when the parties married each other in December 1981, the husband was the sole legal owner of the property and that the entire beneficial interest therein vested in him alone. It is also settled law that in the absence of an agreement,

understanding or common intention between the parties, the Court has no power to vary the beneficial interest of the parties therein. In the absence of an express agreement, a common intention must be implied having regard to all the circumstances of the case. **Sir Nicholas Browne-Wilkinson**, V.C. in **Grant v Edwards et al [1986] 2 All ER 426** at **page 431** had this to say:

> "In order to decide whether the Plaintiff has a beneficial interest in the matrimonial property, we must climb again the familiar ground which slopes down from the twin peaks of **Petitt v Petitt [1969] 2 All ER 385** and **Gissing v Gissing [1970] 2 All ER 780**. In a case such as the present, where there has been no written declaration or 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 a 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."

See also:

(1) **Lloyds Bank PLC v Rosset et al [1990] 1 All ER 1114**;
(2) **Eves v Eves [1975] 3 All ER 768**;
(3) **Heseltine v Heseltine [1971] 1 All ER 952**;
(4) **Cooke v Head [1972] 1 WLR 518**;
(5) **Wachtel v Wachtel [1973] 1 All ER 829**.

[39] In most of these cases, the fundamental and invariably the most difficult question is to decide whether there was the necessary common intention. Proof of a common intention may be by direct evidence. A mere agreement between the parties that both are to have beneficial interests is sufficient to prove the necessary common intention. Or the common intention may be inferred from the conduct of he parties, almost 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 as in **Burns v Burns [1984] 1 All ER 244**. And once it has been established that the parties have a common intention that both should have a beneficial interest and that the claimant has acted to her detriment, the question which remains is: what is the extent of the claimant's interest?

[40] It cannot be disputed that the Petitioner worked continuously and assiduously during the currency of the marriage. I accepted the Petitioner's testimony that there was an understanding that the Respondent would pay the mortgage, water and electricity while she would pay the general household expenses, such as groceries, telephone and helper. I also believed her when she stated that she bought food and clothing for the children whenever she travelled abroad.

[41] In **Burns v Burns [1984] 1 All ER 244, May LJ** at **page 265** said:

> "…when the house is taken in the man's name alone, if the woman makes no 'real' or 'substantial' financial contribution toward either the purchase, deposit or mortgage instalments by means of which the family home is acquired, then she is not entitled to any share in the beneficial interest in that home even though over a very substantial number of years she may have worked just as hard as the man in maintaining the family, in the sense of keeping house, giving birth to and looking after and helping to bring up the children of the union."

[42] In the instant matter, the issue which falls to be determined is whether the Petitioner made any 'real' or 'substantial' contribution towards the acquisition of the matrimonial home? Evaluating the evidence in its entirety, the simple answer must be in the affirmative. In her testimony and which I believed, she deposed inter alia:

> "In 1983, we decided to build downstairs as the children were growing. We added two bedrooms, a living room and a bathroom which could have been converted to a second bathroom. The Respondent took a small mortgage with the Civil Service Association while I bought the ceramic tiles from Martinique with my money. Transportation and duty were paid by me. I was taking care of the children. I bought their clothing, food etc and I paid the maid. The ceramic tiles cost $1,500.00. I paid almost $500.00 for transportation and duties. I built a pavement just in front of the house. I bought slabs. I built a rubble wall [retaining wall] and the balusters on top of the walls were given to us by my mother… Sometime in 1986, the Respondent went to Kallamazoo in Michigan on a training for six months. During that time, I re-modeled the kitchen. I changed all the kitchen cupboards and the doors were custom-made by a French. The doors alone cost over $8,000.00. The actual cost of the cupboard must have been another $3,000.00. I also tiled parts of the kitchen counter with tiles from Martinique. I paid for everything. During those six months, I did not get anything from him. I took my money and paid for everything…"

[43] In my opinion, this evinced the necessary intention of the parties that the Petitioner would be entitled to a beneficial share of the home as well as the detriment suffered by her. And there can be no denying that those were capital improvements of a substantial nature. And there is no doubt in my mind that the Petitioner contributed substantially to the maintenance of the family while the Respondent, who was in a more stable job repaid the mortgage debt. Without her assistance, he would not have been able to do so. Indeed, when she became General Manager of American Airlines in 1989, her salary doubled the Respondent's salary.

[44] Counsel for the Respondent asserted that the Respondent not only paid the mortgage instalments on the matrimonial home but contributed to the running of the household by paying bills and providing for the household expenses as well as the children. I do not think that he could have done all of that on his rather slender salary.

[45] Counsel also submitted that there is no evidence of any intention between the parties that the Petitioner would have a share in the matrimonial home. I agree that there is no direct evidence but, in my view, there is sufficient evidence that the Petitioner made indirect substantial contribution towards the acquisition of the said property and I so find.

[46] On the question of quantification, Learned Counsel for the Respondent contended that the Petitioner is only entitled to be reimbursed the cost of remodeling which according to her is $2,000.00 and $918.00 for the ceramic tiles.

[47] However, Learned Counsel for the Petitioner emphasized that based on the principle enunciated in **Wachtel v Wachtel [1973]** where there is a long marriage and the wife was not gainfully employed but stayed home to take care of the children, the Court started at one-third for her 'services' or 'contributions' and eventually awarded her one-half share in the matrimonial home.

[48] Counsel urged the Court to apply the maxim "equality is equity" for according to her, the Petitioner in the instant case worked and earned more than the Respondent. She took

care of her children and made considerable improvements to the matrimonial home. She contended that the Respondent by his own admission averred that he purchased the house for $52,000.00 and spent another $13,000.00 on improvements thereby expending an aggregate of $65,000.00 on a property which is now valued at $230,000.00. Counsel implored the Court to award one-half share of the matrimonial home to the Petitioner.

[49] On this issue, the following passage in **Lord Diplock's** speech in **Gissing v Gissing [supra]** at **page 792** provides useful guidance. He declared:

> "If the Court is satisfied 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 has 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, 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."

[50] In the light of all the evidence, the law and my findings of fact, I declare that the matrimonial home situate at Sunbilt in the Quarter of Castries belong to the Petitioner and the Respondent in equal shares.

(b) Bonne Terre Property

[51] This property is not being contested. I therefore order that the lands at Bonne Terre registered in the Lands Registry as Parcel 1455B 220 for the Registration Quarter of Gros Islet be declared Community Property and that the property be sold and the proceeds be divided equally or that the Petitioner be at liberty to purchase the Respondent's half-share based on the valuation by Charles Heywood.

(c) Dennery Property

[52] The Petitioner seeks an Order that the land registered as Parcel 1640B 115 for the Registration Quarter of Dennery be declared Community Property.

[53] It is manifestly clear from the evidence that the Petitioner does not know much about this parcel of land. She does not know when it was purchased except to state that it was purchased during the currency of the marriage for the life enjoyment of the Respondent's mother who still lives on the said parcel of land. Under intense cross-examination by Counsel for the Respondent, the Petitioner testified:

> "I do not know where the land is. I do not know the price. There is no house on it. There are neighbours around. At the time of purchase, there was no house on the land. The Respondent's mother lives on the piece of land. I am not claiming the land which the Respondent's mother lives on. There is another piece of land which was bought from Dennery Farmco. The land is at La Caye. I am not sure whether my husband took a loan to buy the land. The Respondent paid for the land."

[54] On the other hand, the Respondent deposed that the parcel of land at Dennery was purchased in 1978, prior to his marriage to the Petitioner. He produced a Deed of Sale to substantiate his assertion: Exhibit DPL1.

[55] It is the submission of Counsel for the Respondent that pursuant to Articles 1192 and 1193 of the Civil Code, this parcel of land cannot and does not fall within the community. I agree entirely with Learned Counsel.

(d) MOVABLES

[56] The Petitioner seeks an Order that the items of furniture and other household items be declared community property and that the Respondent do pay to the Petitioner the sum of $7,500.00 being the value of her one-half share therein.

[57] The Respondent however submitted that the aforesaid items of furniture left in the matrimonial home by the Petitioner are items that she did not want. In cross-examination, she stated:

> "`We were having a lot of problems so I left. I took the children, their clothing, my bedroom set, my machine, a stove and my clothing. I told him that I was going to leave the said morning but when I left, he was not there. I did not have transportation to take the things left behind. The Respondent did not force me to leave anything behind. He prevented me from taking the things because he took the key from me. The day before Debbie told him that I would like my clothing so I did go back and take these stuff including some grocery. He allowed me to take them."

[58] I am in agreement with Counsel for the Respondent that if the items left behind were of any significant value, the Petitioner would not have left them. I therefore order that the parties should retain what ever is presently in their possession, or in the alternative, the Petitioner is free to collect the items of furniture and other household items lying in the matrimonial home.

CONCLUSION

[59] My Order is therefore as follows:

CUSTODY

That custody of **Donna-Sue Lammie**, born on 4th day of January 1984 be granted to the Petitioner with reasonable access to the Respondent.

MAINTENANCE

(1) That the Respondent do pay to the Petitioner $300.00 per month towards the maintenance of Theron and $300.00 per month towards the maintenance of Donna-Sue Lammie until each child reaches 18 or if still attending school on completion.

(2) That the Petitioner and the Respondent contribute equally towards the educational and medical expenses of Theron and Donna-Sue Lammie.

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PROPERTY

(1) **Matrimonial Home at Sunbilt**

I declare that the matrimonial home situate at Sunbilt in the Quarter of Castries belong to the Petitioner and the Respondent in equal shares and that the Respondent do pay to the Petitioner the value of her one-half share therein based on the valuation of Charles Heywood.

(2) **Bonne Terre Property**

I declare that the lands at Bonne Terre registered in the Lands Registry as Parcel 1455B 220 for the Registration Quarter of Gros Islet is community property and that the property be sold and the proceeds be divided equally or that the Petitioner be at liberty to purchase the Respondent's one- half share based on the valuation by Charles Heywood.

(3) **Property at Dennery**

I further declare that the lands at Dennery registered in the Lands Registry as Parcel 1640B 115 for the Registration Quarter of Dennery is the sole property of the Respondent.

MOVABLES

I therefore order that the parties should retain what ever is presently in their possession, or in the alternative, the Petitioner is free to collect the items of furniture and other household items lying in the matrimonial home.

COSTS

That each party do bear his or her own costs.

Indra Hariprashad-Charles
High Court Judge