

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 59 OF 1998

BETWEEN:

ANELTA SHALLOW

Plaintiff

and

HILARY DELPESCHE

Defendant

Appearances:

Mr. Emery Robertson for the plaintiff

Miss Zingha Horne for the defendant

2001:October 22, 23, 29

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JUDGMENT

ALLEYNE J.

[1] The plaintiff Anelta Shallow claims a declaration that the defendant is not entitled to a share in a portion of land on which a residential house is constructed, in the village of Camden Park; a declaration that the plaintiff is entitled to a greater share in the said dwelling house than is the defendant; an order that the plaintiff be enabled to purchase the defendant's share in the said house; an order for possession of the house; and for accounts. The plaintiff also claimed an order for costs. However, at the close of the case Counsel for the plaintiff indicated that he is not seeking costs against the defendant.

- [2] The defendant counterclaimed for a declaration that he is entitled legally and beneficially to the said land and house, and for costs.
- [3] The plaintiff and her daughter gave evidence in support of the claim, while the defendant, his daughter Vanda John, his neighbour Louvina Acosta, and Glenroy Boucher and Lawrence Gurley, masons, testified in support of the defendant's case.
- [4] I start by saying that I was not at all impressed by the witness Vanda John, whose evidence I found not to be generally credible. She was hesitant on some critical issues, appeared to have been coached, but in areas where the coaching was deficient she was very uncertain, and in other areas her evidence was clearly embellished.
- [5] Louvina Acosta was of little help, and neither Boucher nor Gurley added much to the case. Indeed I might say of all the witnesses in the case, including the plaintiff and the defendant, that they were less than impressive witnesses.
- [6] The facts as I find them is that the plaintiff, a long standing resident of Camden Park, had a special relationship with Mr. Jeremiah Scott, at the time Parliamentary representative for that area and a Minister of government. The defendant, in 1991/1992, appears to have been in very difficult and unfortunate circumstances, and was living in a derelict government building. At that time the plaintiff and the defendant, a divorcee, struck up a romantic relationship.
- [7] On the advice of Scott, the parties squatted on a portion of government land and by letter dated August 2, 1991, they were offered the opportunity to purchase the land. They took no action and by letter dated November 29, 1994, they were given a further twenty-eight days within which to arrange a purchase of the land. Again they took no action, although by that time they had long built a dwelling house on the land and were living in that house. I believe that they both contributed, to the extent of their respective abilities, both financially and in terms

of what is called 'sweat equity", to the construction of the dwelling house in contemplation of establishing a permanent relationship and making the house their home.

[8] Towards the end of 1996 the plaintiff negotiated a bank loan for the purpose of purchasing the land and for other purposes. She utilised a part of the funds so obtained to purchase the land in her own name. The loan was guaranteed by her daughter, who contributes equally with her to the servicing of the loan.

[9] Much, if not most, of the materials for the construction of the house was donated free of charge by the government through the intervention of Mr. Scott. I am of the view that whether the document authorising delivery of materials was made in favour of the plaintiff or the defendant, the intention was to benefit both parties who were, as far as Mr. Scott was concerned, a family unit.

[10] I also believe that both parties, in making whatever contribution they made to the construction of the house, did so in contemplation of living in the house as a family unit, and for the equal benefit of both.

[11] In 1996 unhappy differences arose, or perhaps came to a head, between the parties, as a result of which the plaintiff left the house, taking with her a television set, a bed, and other items which belonged to her. It was in that same year that she borrowed \$25,000.00 from CIBC, which loan was secured by her daughter, who is paying back half the loan, the other half being serviced by the plaintiff. That loan was secured on October 31, 1996, and on November 6, 1996, she paid the purchase price for the land on which the house stands, in full. She obtained a Crown Grant in respect of that transaction, dated November 28, 1996, and recorded as deed No. 79/96.

[12] Neither the defendant nor the plaintiff had followed through, for some five years, on the offer for the sale of the land, and the government was free to dispose of the land to any purchaser. There is no ground pleaded or proved on which this

transaction can be set aside, and the legal estate is clearly and unequivocally vested in the plaintiff.

[13] I do not accept that the rest of the money borrowed was utilised to complete the house on the land, as the plaintiff claimed. Indeed by that time she had ceased living in the house. I believe that that money was used to extend and improve the house in which she now lives with her children.

[14] Learned Counsel for the defendant submitted that on the facts a resulting trust arises in favour of the defendant in respect of both the land and the house. Counsel cited the case of **Cupid v Thomas** [1985] 36 WIR 182.

[15] Counsel for the plaintiff, for his part, referred the court to the cases of **Gissing v Gissing** [1970] 2 All ER 780 and **Pettitt v Pettitt** [1969] 2 All ER 385.

[16] On the evidence I can find no ground for inferring a resulting trust in respect of the land. However, the defendant has made a contribution to the construction of the house, by cash and labour, with the intention, shared by the plaintiff, that they would both benefit, I believe equally, from the house. I hold that both the plaintiff and the defendant are entitled to share equally in the value of the house.

[17] I am not satisfied with the evidence of either party on the matter of the value of the house.

[18] The plaintiff's application for a declaration that the defendant is not entitled to a share in the land is granted.

[19] As regards the house, it is declared that the plaintiff and the defendant are equally entitled to benefit from the value of the house. It is ordered that the house be valued by a person agreed by the plaintiff and the defendant, or failing agreement a person appointed by the court upon application by either party, and that the

defendant be paid 50% of the value of the house. The defendant is to vacate the said house within two months of being paid the sum so determined.

[20] The counterclaim is dismissed.

[21] Each party is to bear his/her own costs of this action.

Brian G.K. Alleyne
High Court Judge