

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV0331 / 1999

BETWEEN:

IFEGINA DAVY NEE ALLEN

Claimant

and

**1. ADINA DAVY
2. VERNON DAVY**

Defendant

Appearances:

Mr. Arthur Williams for the claimant.

Mr. Ronald Burch-Smith for the defendants.

2002: October 16

2003: July 31

JUDGMENT

ALLEYNE J.

- [1] Adina Davy and Vernon Davy were married in February 1977, several years after they had established a relationship from which had resulted a child born to Adina when she was 14 years old. By 1985 unhappy differences had arisen, and in 1987 Vernon Davy filed for divorce. During the subsistence of the marriage, by Deed of Conveyance dated 30th July 1984 and registered as Deed No. 1583 of 1984, Vernon Davy became legal owner of the land the subject of this action, on which they built a house. His former wife Adina Davy claims to have made substantial contributions towards the acquisition of the land and the construction of the house, while the husband was out of the island sailing. He was a seaman by profession.

Adina Davy was a farmer and claims to have invested money which she had saved out of her farming activities in the building of the house. She claims that her former husband squandered his earnings as well as a substantial part of the proceeds of a loan which he obtained to build the house. He defaulted in the payment of the mortgage, as a result of which the mortgagee threatened to put up the house for sale under the power of sale in the mortgage.

- [2] While admitting the default in payment of the mortgage, Vernon Davy denies that Adina made substantial contributions towards the acquisition and construction of the property. He claims to have been solely responsible for the financing of the house, and indeed that Adina had neglected to build the house as arranged while he was away at sea, and had used the money which he had left her on unrelated expenditure.
- [3] In 1985 Vernon Davy went to England, ostensibly to join a ship. He claims to have been late to join the ship, and he went to live with his long-time friend the claimant Ifegina Davy, then Ifegina Allen, whom he had known since the 1960's in St. Vincent. Since then Vernon and Ifegina have married.
- [4] By Notice filed in the divorce proceedings on 1st December 1989, Adina Davy gave notice of her intention to apply for an order that the property be transferred to her absolutely. Notwithstanding that, and despite the fact that the Notice had been served on his Solicitors Sylvester & Williams on the same day it was filed, on the 6th February 1990 Vernon Davy executed a Deed of Conveyance of the said land to Ifegina Allen, now Ifegina Davy his wife, for the consideration of \$40,000.00. In an affidavit filed in the matrimonial proceedings on 11th January 1991, at paragraph 10, Vernon Davy deposed that in order to avoid not getting anything from the enforced sale of the property he persuaded his "present wife", Ifegina Davy, to pay off the mortgage, which she did in the sum of \$32,969.67, after which the property was conveyed to her.

- [5] It is of interest that as early as 22nd August 1986, Adina Davy's Solicitors wrote to Vernon Davy, c/o Ivy Allen (presumably Ifegina Davy nee Allen, his present wife and the claimant in this action) informing him that the mortgage payments were "in serious arrears" and expressing Adina Davy's interest in taking over the mortgage , "but only if the property is transferred to her absolutely".
- [6] On 26th October Adina Davy obtained an order from the High Court in the matrimonial proceedings restraining Vernon Davy from selling the property until the matter is settled by the court. Alas, by then he had already sold the property to his then lover with whom he lived and who he has since married, the claimant in this action.
- [7] The action was commenced by Ifegina Davy against Adina Davy, but by order of the court on 1st October 1999, Vernon Davy was joined as a defendant at the instance of Adina Davy. However, at the Case Management Conference on 5th February 2002, it was ordered that the proceedings stand dismissed as against Vernon Davy, and that the matter go to trial on the limited issue of the determination of the shares in the matrimonial home following a valuation thereof. The property has been valued pursuant to the order at \$54,340.00.
- [8] Vernon Davy, by his own evidence, went sailing in 1975, after living with Adina from about 1968 after she gave birth to her child. Adina worked land given to her by her father from a very young age, and I believe that she has always been a self reliant, hard working person who earned an income from agriculture, contrary to the evidence of Vernon Davy that from the time she came to live with him she never worked outside the home until their marriage. I accept that she operated the couple's shop in Georgetown after he went sailing, but that was in addition to her agricultural enterprise.
- [9] I found Vernon Davy an unreliable witness. Much of his evidence in my opinion was untruthful and designed to deprive Adina Davy of her legitimate interest in the property. His untruthfulness was starkly demonstrated when he at first denied that

the signature on the deed of conveyance from him to Ifegina Allen, exhibit A11, was his. He denied having any business dealing with Mr. Matadial, the lawyer who prepared the deed, or signing the deed. However, when I pointed out to him that if that was the case, that would be the end of the matter because then Ifegina Davy had no title to the land, he immediately reversed himself and acknowledged the deed and his signature. In my view, both Vernon and Ifegina Davy were less than truthful in their evidence concerning the sale of the land and I believe that they entered into that transaction in an effort to deprive Adina Davy of access to that property as part of the matrimonial property in the ancillary proceedings in their divorce.

[10] I believe the evidence of Adina Davy that she lived in the house from the time it was built, and still lives there. I believe that she contributed to the purchase of the land and the construction of the house.

[11] In addition to the spouse's equity in the matrimonial home, I believe, and hold, that Adina Davy is entitled to an independent interest in the property through her financial and other contributions to its acquisition. Considering the fact that, following a relationship which existed from before she was 14 years old, when she bore Vernon Davy their child, and that they married when she was 24 years old, she having lived with him for about 10 years, and considering that she alone has been responsible for the maintenance of the house in which she and their son lived, I hold that she is entitled to a three-quarter share and interest in the matrimonial home, and I so declare.

[12] Adina Davy was entitled to occupy the matrimonial home until otherwise ordered by the court in the matrimonial proceedings. The claimant is not entitled to judgment on her claim for rent, damages, possession or otherwise. The defendant Adina Davy is entitled to judgment on her counterclaim, and it is ordered and declared that she is entitled to a three-fourths share in the matrimonial home, being of the value of \$54,340.00 less the outstanding balance on the mortgage at the time of the conveyance to Ifegina Davy of \$32,949.67, being \$21,390.33.

Vernon Davy's one-quarter share of that sum is \$5,347.58. It is ordered that upon the defendant paying the said sum to Vernon Davy, and the further sum of \$24,712.25, being her proportional three-fourths share of the mortgage debt outstanding at the time of the conveyance in the sum of \$32,949.67, to the claimant, the claimant shall convey the said property to the defendant free and clear of all incumbrances or charges.

- [13] The said sums shall bear interest at the rate of 6% per annum from the date of this judgment until paid.
- [14] The defendant is entitled to her costs of the claim and counterclaim, in the sum of \$4,000.00

Brian G.K. Alleyne
High Court Judge