

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO.: SLUHMT 2003/0055

BETWEEN

RAYMOND GENEVIEVE VALERIE

Petitioner

and

ROSEMARY VALERIE (NEE NOEL)

Respondent

Appearances:

Mr. Evans Calderon for Petitioner

Ms. Natalie Augustin for Respondent

2004: January 28
January 30

JUDGMENT

[1] **EDWARDS J:** The Petitioner is a French National domiciled in Martinique and a Pensioner.

[2] The Respondent is a St. Lucian National and a Seamstress.

- [3] The Decree Nisi which was granted in this Court on the 2nd October 2003 has not been made absolute. The parties are still husband and wife.
- [4] On the 17th November 2003 the Petitioner filed this Application for Ancillary Relief.
- [5] The Petitioner wishes this Court to make an Order that the Parties share the wall house or the proceeds thereof built on the portion of land Parcel Nos. 1252B 229 and 300, the land of the Petitioner.
- [6] This land was acquired by the Petitioner in his name in or about February 1998 prior to the marriage under an Aliens Land Holding License.
- [7] At that time the Parties shared a relationship which the Petitioner described as co-habitation, but which is styled by the Petitioner as a weekend visit stay over relationship.
- [8] After their marriage on the 12th October 1989, the matrimonial home presently valuing \$231,000.00 was built on the 2 Parcels of Land which value \$79,104.00.
- [9] Counsel Mr. Calderon has argued that based on Article 11992 of the Civil Code of St. Lucia Chap. 4.01 the land is separate property, since it was acquired by the Petitioner prior to the marriage. That in the circumstances therefore the Respondent has no interest in the land and is entitled to nothing.
- [10] However Section 45 (b) of the Divorce Act No. 2 of 1973 in substance states that before the

decree of divorce is made, the Court may on the Application of either party, make an Order directing:

- (a) the sale of separate property and the division of the proceeds between the parties in such proportions as the Court thinks fit; or
- (b) that either party pay to the other such sum, either in one sum or in or on installments and either forthwith or at a future date which the Court thinks is fair and reasonable;
- (c) where 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 separate property.

[11] The respondent contends that she has a valid and equal interest in the land as well as the house because of her substantial contributions in the form of money payments, services, prudent management and involvement in the acquisition of the land.

[12] The Petitioner has denied this.

[13] The Burden of Proof is therefore on the Respondent to satisfy this Court about these substantial contributions on a balance of probabilities, since Petitioner has proven that it belonged to him and he was in legal possession of it before the marriage.

[14] The Respondent in discharging that burden has filed an Affidavit which states that she did the following things as contributions:

- (a) Participated in the preliminary transactions to purchase the land by carrying out investigations concerning the land, and choosing the land for the Petitioner.
- (b) Contributed to monthly payments for the land purchase through income earned from a contract with Cricks Funeral Home.
- (c) Made deposits in a bank account opened by the Petitioner at the Royal Bank of Canada.
- (d) Cultivated and landscaped the property while the matrimonial home was being built after the marriage.

[15] The Respondent has provided no documentary proof to this Court to support her assertions regarding contributions and Petitioner has denied all of these allegations.

[16] Instead Counsel Ms. Augustin has argued that the Burden of Proof that the land is solely owned by Petitioner is on the Petitioner since there was a common intention prior to the marriage to build the matrimonial home on it. Counsel has relied on Article 1193 of the Civil Code of St. Lucia to support her submission.

[17] I do not believe that Article 1193 helps Counsel's submission since it is clear from the evidence that Petitioner had legal title and possession of the land prior to the marriage.

[18] Respondent has explained in substance in her Affidavit that the Petitioner wanted to have residential status in St. Lucia to obviate the problem of Immigration Stamp Extension. That they investigated and discovered that if the Petitioner owned property in St. Lucia, then he

could obtain residential status here. That is was as a result of the Petitioner's desire to have residential status that he purchased the land. This evidence defeats Counsel Ms. Augustin's submissions regarding the intention of the Petitioner at the time he purchased the land.

[19] In the absence of any documentary proof regarding the Respondent's financial contributions, I find that she has made substantial contributions to the improvement of the land in the form of services.

[20] However, this substantial contribution does not entitle her to a half share.

[21] She is entitled to 1/3 share in my view.

[22] I therefore Order –

- (a) that the Petitioner and the Respondent share equally the wall house or the proceeds therefore built on the land known as Parcel Nos. 1252B 229 and 300.
- (b) That the Respondent has 1/3 share in the land known as Parcel Nos. 1252B 229 and 300 or the proceeds thereof.
- (c) No Order made as to costs.

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OLA MAE EDWARDS
High Court Judge

Dated this day of February, 2004