

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO.: 572 OF 1991



BETWEEN:

LEO B. GEORGE

Petitioner

and

PHILISTINE G. GEORGE

Respondent

Appearances:

Mr. Stephen Williams for Petitioner

Mr. Cecil Williams for Respondent

2005: 10th June

JUDGMENT

- [1] The parties were married in 1986. The union was dissolved in 1992. The Respondent now applies for ancillary relief. There are no minor children with whom I am to be concerned in this matter. The Respondent seeks:
- (1) Property adjustment order in respect of 2 buildings – the former matrimonial home and an adjoining commercial building in which a pre-school is now operated.
 - (2) Half of the sum earned as rental for the two buildings.
- [2] The wife's claim to an entitlement in the buildings is based on her contention that she contributed to the construction and acquisition of the buildings. The buildings stand on lands said to belong to the mother of the Petitioner. She has no documents which demonstrate legal title. However she has been occupying the property without any competing claim for many years. She has permitted the Petitioner to build his home there.

- [3] The Respondent says that when she met the Petitioner he was just lining out the foundations. The Petitioner says that he had fully completed the building in 1984. Both parties were cross-examined on their affidavits. The Court also heard witnesses for both parties.

THE EVIDENCE

The Land

- [4] As noted earlier neither party has legal title to the land. The mother of the Petitioner says she came into ownership of the land when Eurica Alexander died leaving no one else with a better claim to the land. In any event she has since then continued in open occupation undisturbed by any other claimant to the land.
- [5] The Petitioner sought to say that the land belonged to his mother and that he was a bare licensee. He says that this property is therefore not apt to be distributed as part of the family assets on dissolution of the marriage.
- [6] In cross-examination he said, "It is a gift from my mother." His mother Princess George said when cross-examined she admitted that she gave the land to the Petitioner and told him to build his house there. Clearly this verbal gift is not sufficient to transfer the legal estate to the Petitioner. This is so especially when one considers that the mother of the Petitioner has yet to take steps to vest the legal title to the lands in herself. However, it is equally clear that she can do so whenever she wishes. She has been in undisturbed possession for decades. It would not be open to her to refuse to transfer title to the parcel of land on which the Petitioner has built to the Petitioner. She gave the property to him and permitted him to construct his home thereon. Equity will compel her to perfect the gift to her son.

The Matrimonial Home

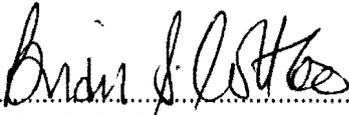
- [7] The Respondent says that the building was constructed jointly. Construction began before the parties were married. The building was completed after the wedding. The Respondent when cross-examined said, "From start to finish I was there with him (the husband)."
- [8] The Petitioner says that the matrimonial home was built before the marriage. He says the Respondent simply moved into a completed furnished home.
- [9] Yet in his affidavit he says that it was only in 2000 that the downstairs was completed. He also says that he operated a liquor and provision shop on the lower storey of the matrimonial home since 1985 and his wife would work in that business while he worked elsewhere.
- [10] His mother gave evidence on behalf of the Petitioner. She said that the entire building was complete before the marriage – including the downstairs. This is inconsistent with the Petitioner's version. In fact the Petitioner in cross-examination sought to make out that he was in Trinidad when the house was built. He says he returned to Canouan in 1986 – the year he was wed – and met the house complete. I saw both parties. I found the Respondent to be more credible. I accept that she assisted in the construction of the matrimonial home.

The Conch Shell Building

- [11] The Respondent says that she operated the liquor and provision shop after the marriage. The profits were used to construct a building in which she operated a boutique and which now houses a pre-school.
- [12] The Petitioner says that this is a small building costing about \$1,000.00 to erect. He built it from conch shells. He says that there was never a boutique operated by the Respondent from that building during the marriage.

- [13] Two witnesses were called by the Respondent. Both attested that there was a boutique operated in the building. Yvonne Rhynd testified that along with her brother she carried materials used in the building of that boutique. She used to buy goods in the boutique for her infant son.
- [14] In answer to the Court the mother of the Petitioner said she thought that there was a boutique in the "Conch Shell Building". In the circumstances, I accept the evidence of the Respondent that she operated a boutique in the building which now houses the pre-school. The value of the two buildings now aggregates to \$185,000.00.
- [15] The Respondent also seeks a share of the income generated by the two buildings since she has been out of occupation. I do not consider that it is open to me to accede to this prayer. I come to this conclusion as there is no legal title to the property in the husband. I will however consider his behaviour in retaining all of the income generated from the buildings when I decide what relief to award the Respondent.
- [16] The property under consideration as I have found, does not yet legally belong to the Petitioner. It is clear from the evidence that he considers it his property. It is a gift from his mother that he can enjoy for his lifetime. I therefore consider it to be part of the family assets. I find that the Respondent contributed greatly to the building of both structures. I am not in a position to quantify with exactitude the proportion of her contribution. I feel however it must have been less than the Petitioner's contribution. I assess it at 40%.
- [17] The Petitioner will make a lump sum payment to the Respondent in full satisfaction of all ancillary claim in this matter. That lump sum is to be in the amount of \$74,000.00 which is equivalent to the 40% of the present value of the matrimonial home and the adjacent "conch shell building". This award takes into account the fact that the Respondent has had exclusive possession of the buildings since 1992. He has been solely responsible for all maintenance since then. The increase in value of the Respondent's 40% interest is meant to compensate her for any revenue forgone over this period.

[18] The Petitioner is to pay to the Respondent costs in the amount of \$3,500.00. This includes costs of \$400.00 already ordered by Alleyne J in 2003 and not yet paid.


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Brian S. Cottle
MASTER