

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO.: 26 of 2003

BETWEEN:

FRANK CYRUS

Petitioner

and

CURCELLE CYRUS nee RYAN

Respondent

Appearances:

Mr. E. Robertson for the Petitioner
Mr. J. Delves for the Respondent

2006: August 18

DECISION

- [1] **COTTE, MASTER:** The parties were married on 26th August 1972. The Petitioner filed for dissolution of the union in 2003 and the decree ending the marriage was made absolute on 23rd November 2003.
- [2] The Respondent has now sought ancillary relief in the form of a property adjustment order in relation to the matrimonial home. The matrimonial home is a one and one half storey building situate on 4,819 sq ft of land at Coconut Range in Campden Park. The land had been the property of the Government of Saint Vincent and the Grenadines. The Petitioner's father had squatted on the land and the Petitioner continued in occupation. The land was eventually purchased and conveyed to the Petitioner in 1997.
- [3] The Petitioner swore an affidavit in which he says that the matrimonial home was built by him in 1962 before the marriage. He says it was "repaired twice, once as a result of a

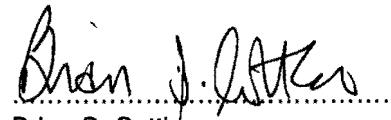


vehicular accident and on the second occasion (he) raised the roof and redid same." He swears that the Respondent has made no contribution to the acquisition of the family home.

- [4] The Respondent says that the Petitioner had originally built a small two-bedroom house. There was no internal bathroom or kitchen. Over the years the parties by their joint efforts added three more bedrooms, extended the sitting room and kitchen and added a dining room. At present the building has been valued at \$135,000.00 by Mr. Franklyn Browne in 2006. Mr. Joseph Lewis put a forced sale value of \$145,000.00 and Mr. Sebastian Alexander valued the property at \$151,195.00. The Respondent says that Mr. Alexander did his valuation without visiting the interior of the house. I am content that the value of the home is in the region of \$140,000.00 to \$150,000.00.
- [5] The Respondent says that over the years there were many renovations of the house that resulted in the present structure from the original building. She says that she financed most of the renovations. She did so from her earnings at St. Vincent Children's Wear, where she was employed for many years, from remittances from relatives abroad and from the income of a small dry goods and liquor shop that she operated jointly with the Petitioner. She also swore that one daughter, Liba, borrowed \$10,000.00 which also went towards renovation of the house.
- [6] I prefer the evidence of the Respondent on this issue. The Petitioner's evidence was sketchy. He did not impress me favorably when he was cross-examined. He made suggestions to the Respondent, such as payment to her of \$20,000.00 from proceeds of a loan (about which I will say more later). When he was afforded time to file an affidavit attesting to the truth of his oral assertion he failed to do so. He did not repeat his assertion when the Respondent and their children who attended as witnesses, were put up for cross-examination. I thus find that the Respondent contributed substantially towards the acquisition of the matrimonial home.

- [7] There is at present an encumbrance on the matrimonial home. On 8th October 2002 the Petitioner mortgaged the matrimonial home to the St. Vincent Co-operative Bank to secure a loan of \$60,000.00. Part of the proceeds of that loan was used to buy a passenger van which was operated by a son of the parties for about one year. The son, David, emigrated and the Petitioner took custody of the van. He operated it. He does not disclose what income the vehicle generated. In fact, he did not disclose in his affidavit of means that he had taken possession of the van and operated it. It was the Respondent who first disclosed this information to the Court. The Petitioner attempts to explain this by saying the van was scrapped several years ago and has only a scrap value of about \$2,000.00. The Petitioner does not say exactly when this van was scrapped. It was bought in 2002. The Petitioner took possession of it in 2003 or 2004. He was purchasing parts to maintain the vehicle –according to his affidavit filed on 4th July 2006 as late as 18th April 2005. This is in direct contradiction to his sworn statement that the vehicle was scrapped several years ago.
- [8] I believe that the Petitioner has had the use of this van for at least 3 years now. He has had the benefit of all income from that van. I consider that the obligation to repay the loan for that van rests upon him alone.
- [9] Mr. Delves for the Respondent has urged me to make findings adverse to the Petitioner as the Petitioner has failed to make full and frank disclosure in this matter. While I accept that the Petitioner has been less than candid in disclosing his assets it is not necessary to make any adverse findings to dispose of this matter.
- [10] There is no issue of maintenance for either party. There are no children with whom I am to be concerned. I am content that both parties contributed to the acquisition of the matrimonial home. The evidence does not permit me to say with any degree of certainty what is the exact proportion that each contributed financially. In the circumstances I hold that the justice of this case requires that the matrimonial home be vested equally in both parties.

- [11] As I have intimated above I consider that it is for the Petitioner to repay the outstanding mortgage loan. The current balance as at March 2006 stands at \$72,660.05. I assess this as equivalent to one half of the value of the matrimonial home. I have seen the parties. I do not believe the Petitioner has any interest or desire to liquidate the mortgage debt. He would prefer to see the property sold from under the Respondent.
- [12] The simplest and most just solution is to order that the Respondent wife be made to repay the mortgage debt. Upon liquidation the property is to be conveyed to her and the interest of the Petitioner husband is to be extinguished. This gives effect to my findings that the parties are equally entitled to the property but that the Petitioner has squandered his half share by obtaining a loan to buy a vehicle, having possession and use of that vehicle and not servicing the loan at all from the income earned by that vehicle.
- [13] I make no order as to costs.



Brian S. Cottle
MASTER