

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(CIVIL)

CLAIM NO. ANUHCV 2006/0375

BETWEEN:

DOROTHY SYMISTER

Claimant

and

LEON SYMISTER

Defendant

Appearances:

Mrs. Denise Jonas-Parillon for the Claimant

Ms. C. Debra Burnette for the Defendant

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2007: April 25 July 30
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Statutory interpretation - Section 19 of the Married Women's Property Act Cap. 267 - Jurisdiction of the High Court to make order with respect to property held by husband and wife as joint proprietors- Relevance of section 101 of Registered Land Act, Cap.374

RULING

[1] **Thomas J:** By way of a fixed date claim the Claimant seeks an order that: "... the property of the parties which they hold as joint tenants registered in the Land Registry as Registration Section: Cassada Gardens & New Winthropes; Block: 42 1894 A; Parcel: 693 be sold and the net proceeds of sale thereof be equally divided between the parties or such order as this Honourable Court thinks just."

[2] This matter went through all the necessary case management procedure and related procedures and came to trial on 25th April 2007. At this time, learned counsel for the Defendant, Ms. C. Debra Burnette took a point in limine. The point being, that where the property is held by joint tenants, the Court has no jurisdiction under the MARRIED WOMEN'S PROPERTY ACT, Cap. 267 to grant an order for sale since given the nature of a joint tenancy there is no dispute as to property.

[3] Central to the issue, therefore, is section 19 of the MARRIED WOMEN'S PROPERTY ACT, Cap. 267 ("the Act"). This provision is not original legislation as it is based on section 17 of the English *Married Women's Property Act, 1882*. This provision is replicated in several Caribbean jurisdictions.

[4] The Antigua provision to the extent of its materiality reads thus:

"19. In any question between husband and wife as to the title to or possession of property, either party ... may apply by summons or otherwise in a summary way to any Judge; and such Judge may make such order with respect to the property in dispute,"

SUBMISSIONS

[5] The submissions advanced on behalf of the Defendant and the Claimant, respectively may be summarized thus:

1. The intention of the Married Women's Property Act is two-fold. First, to acquire, hold and dispose of property by will or otherwise of any real property as her separate property, in the same manner, as if she were a *femine sole*. Secondly, to facilitate a procedure by which either spouse can have disputes as to title or possession of property resolved by the Court. This was fully explained by Lord Morris in *Petit v Petit* [1969] 2 All ER 385 at page 392. Caribbean Courts have, in applying the identical provisions, interpreted it as be inapplicable to the circumstances where title to the property is not in dispute, see: *Ramjohn v Ramjohn* [1973] 22 WIR 498.
2. Where the provisions of section 19 of the Act has been invoked, the Courts is embarking on an inquiry as to which of two parties has the beneficial interest. There is no case where the Courts have been asked to determine a dispute between joint tenants.
3. The fixed date claim and the affidavit in support do not reveal a dispute. The claim is simply for an order for sale which is a remedy and not a legal right.
4. Section 101 of the Registered Land Act, Cap. 374 is relevant to the circumstances of the Claimant as it governs the severance of a joint tenancy.

5. The Claimant's claim should be struck out as the Court has no jurisdiction to grant the order prayed for by the Claimant.
1. The Claimant is seeking a division of the matrimonial property at Cedar Valley in equal shares since the Defendant has not consented to a division of said property.
2. Implicit in the Defendant's failure to consent to the division aforesaid is a dispute to the title which is confirmed by the Defendant's answer to the Claimant's pleadings where the Defendant asked the Court to declare him sole owner.
3. The Married Women's Property Act, Cap. 267 gives the Court jurisdiction where such disputes exist between husband and wife.
4. Contrary to the submission of counsel for the Defendant the Claimant does not seek an order for sale in view of the implicit dispute.
5. The Defendant raised no objection to the Claimant's pleadings at the first hearing of the Fixed Date Claim nor at Pre-Trial Review nor at any time prior to the trial.
6. Given the pending divorce of the parties, the point *in limine* raised at the trial does not further the overriding objective.
7. The Defendant failed to raise to identify the issues raised in its point *in limine* at an early stage (rule 25.1(1) of CPR 2000).
8. Every issue raised in the point *in limine* could have been addressed at a case management conference – see: *Sylvanus Leslie v Ryan Ollivierre Civil Appeal No. 27 of 2001, (SVG)*.
9. If there was no cause of action, no case for the Defendant to answer, no issue to be determined, then the Defendant would have had no answer to the pleadings and would not have been able to identify any issue to be determined by the Court.

ANALYSIS

[6] The Court considers that the words: 'If any question between husband and wife as to title or possession of property' as contained in section 19 of the Act to be critical words in terms of the Court's jurisdiction. In the face of these words, learned counsel for the Defendant submits, in effect, that the words have limited application and certainly there is no jurisdiction where title to the property is not in dispute. In support of this proposition the following dictum based on section 17 of *Married Women's Property Act 1882*, is cited.

Lord Morris spoke thus:

"In my view, all the indications are that s. 17 (following on s. 9 of the Act of 1870) was purely a procedural section. It gave facility for obtaining speedy decision. It related to 'any question between husband and wife as to the title to or possession of property.' In regard to a question as to the title to the property the language suggests a situation where an assertion of title by either husband or wife has been met by denial or by counter-assertion on the part of the other. The language is inept if there was any thought of taking title away from the party who had it.

The procedure was devised as a means of resolving a dispute or a question as to title rather than as a means of giving some title not previously existing. One of the main purposes of the Act of 1882 was to make it fully possible for the property rights of the parties to a marriage to be kept entirely separate.”

- [7] Lord Morris has demonstrated the purpose of the section in several ways. One thing is there is that the Court only has jurisdiction where a dispute or question exists as between husband and wife. This renders this sentence critical: ‘The procedure was devised as a means of resolving a dispute or a question as to title rather than as a means of giving some title not previously existing.’ This would also render the decision in *Ramjohn v Ramjohn* [1973] 22 WIR 498 correct in that the dispute though it existed did not relate to title. Rather, it related to money spent on improvements to the respondent’s property.
- [8] What the Court cannot accept is learned counsel, Ms C. Debra Burnette’s, contention that the Court was never asked to determine a dispute to title and possession of property between joint tenants. But absence is not obsolence. The point being that the Court’s jurisdiction is wide as it extends to “any question” and the fact that no case exists where a joint tenancy exists cannot be conclusive of the matter so as to deny the Court its jurisdiction. And even if there is doubt the purposive construction of statutes doctrine¹ would assist and clarify matters.
- [9] But this is not strictly necessary, for as pointed out by Mrs. Denise Jonas-Parillon, learned counsel for the Claimant, in the case of *TYSON v TYSON* Suit No. 4 of 2000 the High Court of St. Kitts and Nevis (Nevis Circuit) exercised jurisdiction with respect to a joint tenancy.
- [10] As to the interpretation of section 17 of the English Act the following learning is relevant to the exercise. In *LEE v LEE* (1952) 1 ALL ER 1299,1301 Lord Denning said that section 17 of the Act was wide enough to permit a judge to make an order restraining the husband from selling the house to the prejudice of the deserted wife and children. Also in *BROMLEY’S FAMILY LAW* 8th ed. at page 567 it is even stated that proceedings under section 17 of the Act are “usually invoked” when the marriage has broken down.

¹ See: *Pepper v Hart* [1993] 1 All ER 42, 50 per Lord Griffith

[11] Learned counsel for the Defendant has brought section 101 of the REGISTERED LAND ACT, Cap. 374 into the equation in an attempt to point the way the Claimant should go to sever the joint tenancy.

[12] The Court accepts that the said section 101 prescribes the characteristics of a joint tenancy and 'for the avoidance of doubt' declares what may be done by a sole or joint proprietor in terms of dealings in land, lease or charge. These are ordinary dealings where there are no disputes. Whether there are disputes sections 157 and 161 of the Act are relevant in law that the former gives the High Court jurisdiction with respect to civil suits and proceedings relating to the ownership or the possession of land. On the other hand, section 161 seeks to fill any legal lacuna created by the Act. These provisions, in the view of the Court do not render section 19 of the MARRIED WOMEN'S PROPERTY ACT obsolete as, *inter alia*, it is a specific jurisdiction of the Court.

[13] The other matter to be considered is that of jurisdictional fact so as to trigger the Court's jurisdiction. Learned counsel for the Defendant is clear that no dispute exists. What is contended is that the Claimant merely seeks an order for sale. These are her submission.

- "6. When the Court looks at the Fixed Date Claim and the affidavit in support of the same, there is no pleading or evidence that there is a dispute as to the title of the land, rather she asserts that she is a joint registered proprietor and the same is evident by the Exhibit D.S.I of the Claimant's Affidavit. Further, there is no assertion by the Claimant that the Defendant had any witness to dispossess the Claimant of the land. The provisions of the Married Women's Property Act do not give a party a right to seek an order for the sale of land.
7. The claim is simply for an order for sale which it is submitted is a remedy and not a legal right. The Claimant has asserted no legal right save to say that she is a joint proprietor.
8. The nature of joint proprietorship is such that neither of the joint tenant has a separate share in the land and consequently dispositions may only be made by all the joint proprietors. The Defendant is fortified in his view by section 101 of the Registered Land Act, Cap. 374 which provides the circumstances under which a joint tenancy may be severed."

[14] The submissions on the point by learned counsel for the Claimant are in the following terms:

"On the face of the pleadings the Claimant seeks a division of the matrimonial property at Cedar Valley in equal shares for the express reason that the Defendant has not consented to the same or to any division of the said property – see paragraphs 5, 6, and 7 of the Claimant's first affidavit filed July 12th 2006. In Exhibit 'DS2' to the Claimant's second affidavit filed December 5th, 2006, the Defendant was asked by the Claimant by letter dated

June 16, 2006 to agree to pay to her half of the value of the Cedar Valley Property and thereupon to keep the entire property for himself or to agree to the division in equal shares of the property between the parties. The Defendant never consented to either request and rudely failed or refused to even respond to the said letter. The Claimant expressly pointed out in the pleadings that the parties are engaged in divorce proceedings hence her desire that the property be divided between the parties – paragraph 5 of the first affidavit.

Implicit in the Defendant's failure to consent to a division of the said property in equal shares is a dispute as to title. In the circumstances of the parties' imminent divorce, there is no other reasonable explanation for Mr. Symister's failure to consent to a division of the said matrimonial property in equal shares between the parties. This implicit dispute as to title was expressly CONFIRMED by the Defendant when in answer to the Claimant's pleadings the Defendant asked this Honourable Court to declare that he is the SOLE OWNER of the said Cedar Valley property

It is the Married Women's Property Act, Cap 267 which deals with such property disputes as to title between husband and wife and the action was properly brought under the said Act.

The Defendant has submitted that the Claimant's claim was one only for an order of sale of the joint property at Cedar Valley and that the proceeds of sale is not true. The Claimant seek a division of the matrimonial property in equal shares to bring to an end the implicit title dispute between the parties. The Claimant clearly stated at paragraph 5 of her first affidavit that she wants to be given her share of the property and hence asked that the property be sold and the proceeds be equally divided or that the Court make such order that it thinks just."

[15] In the Claimant's affidavit in support of the fixed date claim filed on 12th July 2006, the following is deposed at paragraphs 3 to 6:

- "3. I jointly own with my husband a parcel of land at Cedar Valley which is registered in the Land Registry as Registration Section: Cassada Gardens & New Winthropes; Block: 42 1894 A; Parcel: 693.
4. We own the land as joint tenants.
5. Given the breakdown of our marriage and our imminent divorce, I desire that I be given my share of the said property.
6. By letter dated June 16th, 2006 my solicitors wrote to the Defendant's solicitors requesting that the property be divided equally between myself and the Respondents."

[16] Learned counsel for the Claimant makes the point that the Defendant's part, on 28th August 2006, in the same matter (ANUHCV 2006/0375), filed an application seeking to declare the sole owner of the said parcel in issue. The application is supported by an affidavit of even date.

CONCLUSION

- [17] It is the compendium of the actions by the Claimant and the Defendant, which according to learned counsel for the Claimant, gave rise to an implicit dispute. That much is clear, as in the face of a joint-proprietorship, one party is seeking to be declared sole proprietor while the other is seeking her share in the said property.
- [18] Therefore, it is the view of the Court there is a dispute or question between husband and wife which grounds jurisdiction for the purposes of section 19 of the **MARRIED WOMEN'S PROPERTY ACT, Cap. 267**.
- [19] It follows that the application to strike out the Claimant's claim is refused. For this the Defendant must pay costs to the Claimant in the amount of \$1,500.00.
- [20] The scholarship of counsel on both sides is deeply appreciated by the Court.

Errol L. Thomas
Judge